

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1138

B  
P/S

UNITED STATES COURT  
OF APPEALS FOR THE  
SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Respondent

vs.

HERBERT DAVIS GORDON,

Defendant-Appellant.

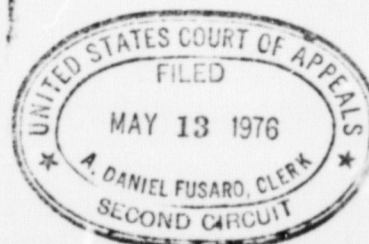
76-1138

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APPENDIX

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Attorneys for Defendant-Appellant  
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THOMAS N. RINALDO, ESQ.  
of Counsel.



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## Exhibits

Advice of Rights Form	A
Consent to Search Form	B
Motion for psychiatric examination of defendant	C

PAGINATION AS IN ORIGINAL COPY



JUDGE/MAGISTRATE Assigned Trial 0906		GORDON, HERBERT DAVIS		Day Mo. 9 10 75 234	
209 1 District Office		defendant		No. of 1 Defendants	
18-2113(a) Bank robbery by intimidation (Ct. 1)		1		MAGR CASE NO. 75-294	
18-2113(b) Bank Theft (Ct. 2)		1		BAIL • RELEASE	
18-2113(d) Bank robbery with dangerous weapon (Ct. 3)		1		Denial: <input type="checkbox"/> Personal Rec <input type="checkbox"/> Unsecured B AM: <input type="checkbox"/> Conditional Release Set (000) <input type="checkbox"/> 10% De \$ 35 Cont <input type="checkbox"/> Surety date <input type="checkbox"/> Collater <input checked="" type="checkbox"/> Bail Not Made <input type="checkbox"/> 3rd Part <input type="checkbox"/> Bail Status Changed <input type="checkbox"/> Custody (See Docket) <input type="checkbox"/> PSA	
Roger Williams, AUSA		Thomas N. Rinaldo			
ARREST 10/6/75 U.S. Custody or Began on Above Charges		INDICTMENT 2 10/9/75 Information <input type="checkbox"/> High Risk Defn. & Date Design'd Waived <input type="checkbox"/> Superseding <input type="checkbox"/> Indict/Info <input type="checkbox"/>		ARRAIGNMENT 3 11/17/75 EFM/090A 1st Plea 11/17/75 Final Plea	
Prosecution Deferred		Trial Set For <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> Guilty		TRIAL 4 Voor Dire <input type="checkbox"/> Trial Began <input type="checkbox"/> J <input type="checkbox"/> N Trial Ended Disposition <input type="checkbox"/> Convicted <input type="checkbox"/> On All Ch <input type="checkbox"/> Acquitted <input type="checkbox"/> On Lesser Offense(s) <input type="checkbox"/> Dismissed <input type="checkbox"/> WOP; <input type="checkbox"/> <input type="checkbox"/> Nolle/Discontinued*	
Search Warrant		Issued		DATE	
Return				INITIAL/No.	
Summons		Issued		INITIAL APPEARANCE	
Served				PRELIMINARY EXAMINATION OR REMOVAL HEARING	
Arrest Warrant		10/6/75 EFM		Date Scheduled	
COMPLAINT		10/6/75 EFM		Date Held	
OFFENSE (In Complaint)		Armed robbery of Homestead Div. of First Federal Savings & Loan Assoc. 18 USC Sect. 2113(a)(d)		Outcome <input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District GJ <input type="checkbox"/> Held to Answer to U. S. District Court BOND <input type="checkbox"/> Exonerated <input type="checkbox"/> To Transfer District AT: Magistrate's Initials	
DATE		PROCEEDINGS		V. Excludable Delay	
10/16/75		Filed Magistrate's complaint, affidavit from the W.D.N.Y.; Magistrate's temporary commitment, waiver of removal hearing, bail reform act form no. 2, from the Magistrate for the Northern Dist. of Texas		(a) (L) (c)	
10/24/75		Filed Deft's consent to transfer action for plea and sentence to the U.S. Dist. Court for the Northern District of Texas Pursuant to Rule-20			
10/30/75		Orig. Indictment, certified cy. of defendant's consent to transfer for plea and sentence, papers received from the Magistrate for the Northern Dist. of Texas, copy of docket sheet, and form B mailed to the Clerk, U.S. Dist. Ct., for the Northern Dist. of Texas, at Dallas, pur. to Rule-20			
11/13/75		Certified cy. of Order of transfer, Orig. Indictment, and other papers returned from the Northern Dist. of Texas, upon deft's refusal to proceed pur. to Rule-20			
11/7/75		Filed Magistrate's docket			
11/17/75		At arraignment, discovery schedule set: discovery motions to be filed by Nov. 24th; Government's response to be filed by Dec. 1st; Argument scheduled Dec. 2, 1975. Bail continued at \$35,000. Remanded to custody of Marshal			

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
11/18/75	Filed cy. 5, CJA 20, Ord. appointing Thomas Rinaldo counsel. (Maxwell, Magistrate)				
11/19/75	Filed Orig. Warz.-executed				
11/20/75	Filed Deft's. Mot. for B/P's, Rule 16 Discovery, Insp. of G.J.Minutes, Order for transcript of arraignment, Order allowing defendant to incur expenses of Investigator and Court Steno, Wade Hearing, and Order directing examination by two psychiatrists.				
11/26/75	Filed Govt's response to certain pre-trial motions filed by the deft. herein				
11/25/75	Proceedings before the Magistrate - Motions have been filed; Govt. to respond by 12/1/75 & argument on 12/2/75 as scheduled				
12/2/75	Proceedings before the Magistrate - Request for transcript of arraignment withdrawn by defense. Argument on motions - denied in part, resolved or granted.				
12/15/75	Filed Deft's notice of motion & affidavits for psychiatrist to examine the deft. if he is presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him, or properly assist in his own defense, and whether the deft. was mental competent at the time of the commission of the crimes charged in the indictment, pur. to T.18, U.S.C., Sect. 4244-Ret. 12/15/75				
12/15/75	Filed Order that the deft. be examined by Michael J. Lynch pur. to T.18, U.S.C., Sect. 4244, etc. ELFIN, J.				
12/15/75	Court granted motion by deft. to examine deft. as to competency to stand trial and as to competency at time of offense				
1976 Jan 26	The court set hearing on 1/29/76 to suppress identification and statement, and trial to commence on 1/30/76				
1/29/76	Hearing on Deft's motions to suppress identification, evidence and oral admissions; Court reserves decision to admit two guns as evidence and oral admissions				
1/30/76	Filed Ct. Steno's transcript of suppression hearing taken on 1/29/76				
1/30/76	Filed Cy. 5 of CJA-21 - authorization for transcript (daily cy.)				
1/30/76	Filed Cy. 2 - of CJA-21 voucher for transcript in the amt. of \$237.50; Orig. to the Adm. office for payment.				
1/30/76	Filed Six subpoenas - Lawrence A. Murphy, Irene Wolfe, Gary L. McGuire, Frances Bialek, Eileen Ivadella Batt, Thomas K. Schlicht, served 1/27/76				
1/30/76	Govt. moves case to trial before Judge Elfvin and jury, at Buffalo, N.Y.; trial adj. 2/3/76				

(a)	(b)	(c)
Interval (per Section II)	Start Date End Date	Ltr. Code



DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
2/3/76	Trial continues same appearances and jury; Court denies deft's motions to dismiss; Jury leaves to begin deliberation; Jury enters and reports a verdict of guilty on all three counts; Jury is discharged; Ct. directed motions against the verdict on 2/6/76				
2/4/76	Filed one subpoena for Thomas Nogard served on 2-2-76 Filed one subpoena for Deborah Daniels served on 1-29-76				
2/5/76	Filed two subpoenas for Peter Grabolle and Thomas Nogaro, returned no service.				
2/5/76	The Court denies motion by deft. to set aside the verdict of the jury. Sentencing set for 3/15/76				
2/11/76	Filed subpoena - Earl L. Sanders, served 1/29/76				
3/15/76	Filed Cy 2 and 5 of CJA-21 - Authorization and voucher for transcript in the amt. of \$160.50; Orig. to the Adm. office for payment.				
3/15/76	The Court sentenced deft. to the custody of the Attorney General for a period of Eighteen (18) Years--ELFVIN, J.				
3/16/76	Filed Ct. Stenographer's transcript of trial 1/29/76 & 1/30/76 (Two Volumes)				
3/18/76	Filed Ct. Steno's. transcript of proceedings before Judge Elfvin on 3-15-76.				
3/19/76	Filed J & C, Elfvin J.				
3/23/76	Filed deft's notice of appeal.				
3/24/76	Cy. of Deft. Gordon's notice of appeal, mailed to the U.S. Atty., and the CCA with form A, CJA-23, statement of docket entries. Cy. of notice of appeal given to deft., by defense counsel.				
3/31/76	Filed copies 2 and 5 CJA 21 authorization and voucher for expert services. Elfvin, J.				

CLOSED

# In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

<sup>-VS-</sup>  
HERBERT DAVIS GORDON

MARCH 1975 SESSION ~~Term~~  
(Impaneled May 27, 1975)

No.

1275-234

Vio.

T. 18, U.S.C.,  
§ 2113(a), (b)  
and (d)

## COUNT I

The Grand Jury Charges:

On or about the 3rd day of October, 1975, in the Western District of New York, the defendant, HERBERT DAVIS GORDON, did, willfully, knowingly and unlawfully, and by force, violence and intimidation, take from the person and presence of Eileen Batt and others approximately \$685.00 in money, belonging to and in the care, custody, control, management and possession of the First Federal Savings and Loan Association of Rochester, New York, Homestead Division, 360 Pearl Street, Buffalo, New York, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(a).

## COUNT II

The Grand Jury further charges:

On or about the 3rd day of October, 1975, in the Western District of New York, the defendant, HERBERT DAVIS GORDON, did, willfully, knowingly and unlawfully take and carry away, with intent to steal and purloin, from the



First Federal Savings and Loan Association of Rochester, New York, Homestead Division, 360 Pearl Street, Buffalo, New York; the sum of \$685.00 in money, belonging to and in the care, custody, control, management and possession of said bank, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(b).

COUNT III

The Grand Jury further charges:

On or about the 3rd day of October, 1975, in the Western District of New York, the defendant, HERBERT DAVIS GORDON, by force, violence and intimidation, did take from the person and presence of Eileen Batt approximately \$685.00 in money belonging to and in the care, custody, control, management and possession of the First Federal Savings and Loan Association of Rochester, New York, Homestead Division, 360 Pearl Street, Buffalo, New York, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation, and HERBERT DAVIS GORDON, in committing the aforesaid offense, did assault Eileen Batt and put in jeopardy the life of Eileen Batt with the use of a weapon, to wit, a handgun; all in violation of Title 18, United States Code, Section 2113(d).

Richard J. Arcara  
RICHARD J. ARCARA  
United States Attorney

A TRUE BILL:

Earl R. Dewey  
Foreman

No. 1171-234

UNITED STATES DISTRICT COURT

WESTERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

HERBERT DAVIS GORDON

INDICTMENT

A true bill,

by Earl R. Henry  
Prosecutor

Filed in open court this 9th day  
of October, A. D. 19 71

Clerk.

Bail, \$ \_\_\_\_\_



United States of America vs.

United States District Court for

DEFENDANT

HERBERT DAVIS GORDON

WESTERN DISTRICT OF NEW YORK

DOCKET NO. Cr-1975-234

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245, 10/24/71

In the presence of the attorney for the government the defendant appeared in person on this date MONTH DAY YEAR  
March 15, 1976

COUNSEL ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.  
☒ WITH COUNSEL Thomas Rinaldo  
(Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☒ NOT GUILTY

FINDING & JUDGMENT There being ~~verdict of~~ ☐ NOT GUILTY. Defendant is discharged.  
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of Bank robbery by intimidation (Ct. 1) in vio. T. 18 2113(a) Bank theft (Ct. 2) in vio. T. 18 2113(b) Bank robbery with dangerous weapon. (Ct. 3) in vio. T. 18 2113(d)

SENTENCE OR PROBATION ORDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~THE COURT ORDERED THAT THE DEFENDANT BE SENTENCED TO THE CUSTODY OF THE ATTORNEY GENERAL FOR A PERIOD OF EIGHTEEN (18) YEARS.~~

Defendant is sentenced as follows: The Court sentenced defendant to the custody of the Attorney General for a period of eighteen (18) years.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

*John T. Elfvin*  
John T. Elfvin, U. S. District Judge

Date March 15, 1976

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK

3 -----  
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 -vs-

Cr. 75-234

7 HERBERT DAVIS GORDON,

8 Defendant.  
9 -----

10 Testimony of EILEEN BATT, FRANCES BIALEK and  
11 H. LAMAR MEYER in proceedings held in the above entitled  
12 action before the HON. JOHN T. ELFVIN, United States  
13 District Judge, in and for the Western District of New  
14 York, at Buffalo, New York, on January 29, 1976.

15 APPEARANCES:

16 RICHARD J. ARCARA, ESQ.,  
17 United States Attorney, by  
18 ROGER WILLIAMS, ESQ.,  
19 Ass't. United States Attorney,  
20 Appearing on behalf of the Government.

21 THOMAS RINALDO, ESQ.,  
22 Appearing on behalf of the Defendant.

23 \* \* \* \* \*



1 Q. Did you notice if he had shoes on?

2 A. I didn't look at his feet. He must have had shoes  
3 on.

4 Q. Did he have eyeglasses on?

5 A. Yes.

6 Q. Do you recall what they looked like?

7 A. They were plastic frames.

8 Q. Did he have a hat on?

9 A. No.

10 Q. Do you recall what he had in his hands, Miss Bialek?

11 A. He had the gun and a bag.

12 MR. RINALDO: I have nothing further, your Honor.

13 MR. WILLIAMS: I have nothing further.

14 THE COURT: All right, thank you.

15 (Witness excused.)

16  
17 H. L A M A R M E Y E R , 4207 Valley Ridge Road,  
18 Dallas, Texas, called as a witness on behalf of the  
19 Government, and being first duly sworn, testified as  
20 follows:

21 DIRECT EXAMINATION BY MR. WILLIAMS:

22 Q. Mr. Meyer, you are a special agent of the FBI, correct?

23 A. Yes, I am.

24 Q. How long have you been a special agent?

25 A. Fourteen years in February.

1 Q. What is your post of duty?

2 A. Dallas, Texas.

3 Q. How long have you been in Dallas?

4 A. About five and a half years now.

5 Q. All right, sir. Directing your attention to October 6,  
6 1975, did you have occasion on that day to go to the  
7 YMCA in Dallas, Texas?

8 A. Yes, I did.

9 Q. And where is that located?

10 A. The downtown branch of the YMCA is located on the  
11 600 block of North Ervay Street.

12 Q. Now, prior to the time that you went to the Y on  
13 North Ervay Street on October 6th, did you have some  
14 information from your Buffalo, New York office?

15 A. Yes. Our alternate supervisor had received a phone  
16 call from our FBI office here in Buffalo, New York,  
17 and from the telephone call had made a handwritten  
18 record of some details involving a bank robbery that  
19 had occurred on the 3rd day of October here in  
20 Buffalo. The various details he received included  
21 the name of the man that they thought had done it.  
22 They said Herbert Davis Gordon they thought was the  
23 subject. They had developed information through  
24 their investigation here to indicate that Mr. Gordon  
25 may have traveled from Buffalo to Dallas, Texas after



1 the robbery, and they thought he might be lodged there  
2 at the YMCA in downtown Dallas.

3 Q. At the time you went out did you have any other  
4 information?

5 A. Yes. We had information that the man might be armed  
6 because he had allegedly committed an armed robbery.  
7 We had information to indicate he may have mailed  
8 or had sent some personal property through the Railway  
9 Express Company directly to the downtown office of the  
10 YMCA, and to us this indicated that probably he was  
11 there or at least enroute to the YMCA.

12 Q. All right, sir. About what time did you arrive at  
13 the Y?

14 A. Shortly after three o'clock, I would guess like  
15 3:02 or 3:10 P.M..

16 Q. All right. Now, at the time you went there did you  
17 know whether or not a warrant had been issued for  
18 the arrest of the bank robber?

19 A. Yes, I should have included that in the information  
20 we received by phone from Buffalo. We had the  
21 information that a warrant had been issued that morning  
22 on the 6th, October 6, 1975, at Buffalo for the  
23 arrest of Mr. Gordon.

24 Q. And did you also have any photograph or facsimile  
25 of a photograph?

- 1 A. Yes, they forwarded to us a facsimile by telephone  
2 of a photograph taken by a bank surveillance camera  
3 of the robber during the robbery of the bank.
- 4 Q. All right. Let me show you what has been marked  
5 as Government's Exhibit 15 for identification. Is  
6 that the facsimile to which you have just testified?
- 7 A. Yes, it is.
- 8 Q. All right. When you went to the Y did you have that  
9 in your possession?
- 10 A. Yes, we did.
- 11 Q. About what time did you arrive there?
- 12 A. Shortly after three o'clock. Three-ten probably  
13 is a good time. I think very close to that.
- 14 Q. P.M.?
- 15 A. Yes, sir, P.M., in the afternoon.
- 16 Q. All right. And were you accompanied by any other  
17 agents?
- 18 A. Yes, I had two other agents I was able to get to  
19 come with me from our squad. One was Dodson Haynes,  
20 the other was Philip Lowell. They accompanied me to  
21 the YMCA.
- 22 Q. Tell us what, if anything, you did upon arrival  
23 at the YMCA?
- 24 A. Once we arrived I went directly to the resident  
25 manager, Mr. Wilson, to check to records to see



1 if they had a man by the name of Gordon as a resident  
2 at the YMCA. We left Mr. Lowell out in the hallway  
3 where people had to come and go from the elevators  
4 in the building, and Mr. Haynes and I checked the  
5 records with Mr. Wilson.

6 Q. All right. In checking the records did you discover  
7 whether or not anyone by the name of Gordon was  
8 registered at the Y?

9 A. Yes, Mr. Wilson did have a Herbert D. Gordon register-  
10 ed at the YMCA in Room 721.

11 Q. All right, sir. Did there come a time when you went  
12 to Room 721?

13 A. Yes, after we confirmed that he was registered there,  
14 that he had paid his rent, and so forth, we went  
15 out into the lobby and talked to Mr. Lowell, who said  
16 he saw a man that resembled Gordon go up in the  
17 elevator. We felt sure he was in the room. We  
18 went up to 721, and that is where we knocked on the  
19 door and arrested him.

20 Q. When you say "we went up," who is we?

21 A. Haynes and I. Since we were not sure that it was  
22 Gordon that went upstairs, we left Lowell downstairs,  
23 and Haynes and I proceeded up to the 7th floor.

24 Q. Before you went to the 7th floor, did Mr. Lowell  
25 give you any information about his observation of

1 the individual getting into the elevator and what  
2 floor it stopped at?

3 A. He observed an individual -- he had a copy of this  
4 facsimile we talked about earlier -- and he said  
5 an individual resembling the man in the facsimile  
6 had gone upstairs. He described him as a black male  
7 of approximately forty-six --

8 MR. RINALDO: I object to this line of questioning  
9 as to what Mr. Lowell said, or what have you.  
10 I think Mr. Williams --

11 MR. WILLIAMS: It is not being offered for the  
12 truth of the statement, simply as an  
13 explanation as to how and why Mr. Haynes  
14 and this witness went upstairs to Room 721.

15 THE COURT: Just leave it out.

16 MR. WILLIAMS: All right.

17 BY MR. WILLIAMS:

18 Q. Now, when you got up to Room 721, Mr. Meyer, what,  
19 if anything, did you do?

20 A. Once at the room I knocked on the door.

21 Q. All right. What happened?

22 A. The door was opened by a man I recognized as the  
23 man in that facsimile that I had received from  
24 Buffalo and --

25 Q. Will you describe that man that you saw?



- 1 A. Yes. He was a black male, approximately forty-five,  
2 forty-six years of age, wearing glasses, had short  
3 cut black curly hair, he was of slight build, he was  
4 about five feet six inches tall, and I just immed-  
5 iately recognized him as the man in the facsimile.
- 6 Q. All right, sir. From the time that you first saw  
7 him, how much time were you with him that day? How  
8 long were you in his presence that day?
- 9 A. About an hour, maybe an hour and fifteen minutes at  
10 the most.
- 11 Q. Do you see that individual in the courtroom today?
- 12 A. Yes, I do.
- 13 Q. Would you point him out for us?
- 14 A. He is seated over there without a hat, wearing glasses,  
15 next to defense counsel.
- 16 Q. All right. Now, when this individual opened the  
17 door what happened then, what did you do, what did  
18 you say?
- 19 A. I pushed my way into the room, and told Mr. Gordon  
20 that I was an agent with the FBI, as was Mr. Haynes,  
21 and that he was being placed under arrest for bank  
22 robbery based on a warrant issued in Buffalo, New  
23 York.
- 24 Q. All right, sir. Now, will you describe that room for  
25 me, please?

1 A. Yes. It is a small room of like seven feet in  
2 depth -- wait -- seven feet wide by ten and a half  
3 feet in depth, and practically full of furniture;  
4 a bed, a small desk, a bureau of drawers, two chairs,  
5 a TV up on the wall, mounted on the wall, plus a  
6 closet. There was a closet up toward the front of  
7 the room, a small closet.

8 Q. Now, after you told him that you were placing him  
9 under arrest for bank robbery what, if anything, did  
10 you do next or say, and what, if anything, did he do  
11 or say?

12 A. By that time he was handcuffed. We had searched  
13 and handcuffed Mr. Gordon. I then sat down on the  
14 bed with him --

15 Q. You say you searched him?

16 A. Yes. By "search" I didn't mean turning his pockets  
17 out. I mean like a brief frisk for weapons, knowing  
18 that he possibly was a man wanted for armed robbery.  
19 That is one of the first things we do is check for  
20 weapons.

21 Q. That is what you did in this case?

22 A. Yes. Then once he was handcuffed, I sat with him  
23 on the bed and explained his rights to him. I  
24 pulled out --

25 Q. When you say "explained his rights to him," what



1 did you do, what did you say?

2 A. I pulled out a printed copy of his rights and read  
3 them to him, and then I showed him the printed form  
4 of his rights so that he could read them, and he  
5 glanced at the page and I assumed he read them.  
6 I asked him if he would elect to sign the waiver  
7 of his rights at the bottom of the page. At that  
8 time he said no, that he don't think he should sign  
9 anything at that point.

10 Q. All right, sir. Let me show you what is marked  
11 Government's Exhibit 12 for identification. Do you  
12 recognize that?

13 A. Yes, that is my handwriting, that is the copy of  
14 his rights that I read to Mr. Gordon.

15 Q. All right. Is that a standard form that your office  
16 uses?

17 A. Yes, it is.

18 Q. And you read that to him?

19 A. Yes, I did.

20 Q. All right. Now, after you finished reading that to  
21 him what, if anything, did you do?

22 A. I asked him to sign it, if he would elect to sign  
23 it, with the explanation it was his choice, he  
24 could elect to sign it and waive these rights or  
25 he could elect not to sign it and still talk to

1 us, realizing he could stop at any time, refuse to  
2 answer any questions, refuse to continue the inter-  
3 view at any time if he so elected. He elected not  
4 to sign.

5 Q. All right, sir. You indicated that you also exhibited  
6 that form to him?

7 A. Yes, I did, after I read it to him.

8 Q. All right. What happened then?

9 A. Before we sat down on the bed actually, I was concern-  
10 ed about the weapons, before we sat on the bed, I  
11 found one weapon on the bed which was a .38 caliber  
12 Special, snub nose type revolver.

13 Q. Well, at what point did you find this revolver on  
14 the bed?

15 A. I did that -- I found -- I should have mentioned that  
16 earlier. I found the revolver before we sat on the  
17 bed, before I gave him his rights.

18 Q. How did you happen to find the revolver?

19 A. Well, I asked him, "Do you have any weapons in the  
20 room?" He indicated the one on his bed. He also,  
21 as I recall, had a jacket on the bed. He indicated  
22 there was a pistol there, and I got that.

23 Q. When you say he indicated, did he say something to  
24 you, was he motioning or pointing? What do you  
25 mean by "indicated"?



1 A. He kind of motioned with his head, as I recall, that  
2 there is one on the bed. He turned his head to the  
3 side, like that, and looked toward the bed. I immedi-  
4 ately went to the bed and found it.

5 Q. After you got into the room and you were with Mr.  
6 Gordon, how far away were you from the bed where  
7 you discovered this weapon?

8 A. Oh, less than a step, less than a step. It's a  
9 crowded room.

10 Q. All right, sir. Let me show you what is marked as  
11 Government's Exhibit 7 for identification, and ask  
12 you, sir, if you recognize that?

13 A. Yes, that is weapon I found on his bed. It's got  
14 my initials written on the card.

15 Q. And a date?

16 A. Yes, sir.

17 Q. When you discovered that can you tell us whether or  
18 not it was in this holster?

19 A. Yes, it was in that holster. I have initialed the  
20 holster and dated it also.

21 Q. All right, sir. Did you take that into your possess-  
22 ion?

23 A. Yes.

24 Q. What, if anything, did you do or say next?

25 A. I asked him if there were any more weapons in the

1 room. He said yes, and further said there was a  
2 weapon in the white bag in closet. I immediately  
3 went to the closet and pulled out a white vinyl bag  
4 with a zipper, and there was a weapon in that. It  
5 was an automatic pistol, this time of a different  
6 caliber, but it was in a holster also in the bag.

7 Q. Now, at what point did this come about, when you went  
8 into the closet?

9 A. Before we sat down and I read him his rights. I asked  
10 him immediately -- once we placed him under arrest  
11 and identified ourselves, I asked about the weapons.  
12 I told him first why he had been arrested, who we  
13 were, and I asked him if there were any weapons in  
14 the room. That was the first thing I recall asking  
15 him. Once I recovered the gun on the bed and the  
16 gun in the closet, we sat down and explained his  
17 rights to him.

18 Q. All right. Now, let me show you what has been marked  
19 Government's Exhibit 13 for identification. Do you  
20 recognize that?

21 A. Yes, this is the white vinyl bag I found in the  
22 closet. It has my initials and the date on it.

23 Q. All right. This is the bag that you just referred  
24 to in your testimony?

25 A. Yes.



1 Q. Now, you say that bag contained something?

2 A. Yes, sir, it contained a 9 millimeter automatic  
3 pistol, as well as some money. There was loose  
4 change, as well as some bills in the bag, and a few  
5 personal possessions, underwear, things like this.

6 Q. All right, sir. What, if anything, do you recall  
7 about the bills that were in that bag?

8 A. We compared the bills with the bait list of twenty  
9 dollar bills we had received by phone from our  
10 Buffalo office. Two of the twenty dollar bills I  
11 found in that bag had serial numbers that matched  
12 the bait bill serial numbers we had received from  
13 Buffalo.

14 Q. At what point did you do that?

15 A. This was after we had warned him and read him his  
16 rights.

17 Q. You testified you obtained the bag before you  
18 advised him of his rights, correct?

19 A. Yes, but I removed only the weapon from the bag.  
20 After I did that then I asked him if he would allow  
21 us to search the room. Then I executed a permission  
22 to search form with Mr. Gordon.

23 (Thereupon Government's Exhibit 27 was  
24 marked for identification.)  
25

1 Q. Let me show you Exhibit 27, do you recognize that?

2 A. Yes, sir, this is the -- I see my initials on the  
3 holster -- this is the 9 millimeter automatic that  
4 I recovered in the white vinyl bag.

5 Q. All right. After you -- strike that. Did you remove  
6 this from the white vinyl bag?

7 A. Yes.

8 Q. That is Exhibit 27. What happened then?

9 A. Then we asked Mr. Gordon if he would object to our  
10 searching the room. I read to him and displayed to  
11 him a permission to search form. He said he would  
12 have no objection, and signed the form. We continued  
13 to search in detail now.

14 Q. Did that occur before or after you testified that  
15 you advised him about his rights?

16 A. That was after the rights.

17 Q. My question is now precisely at what point did you  
18 advise him of his rights?

19 A. Right after the arrest and the recovery of the weapon  
20 on the bed and the recovery of the weapon in the  
21 bag. Once I had the two firearms, he said there  
22 were no others, then I warned him of his rights,  
23 read the rights to him.

24 Q. All right.

25 A. Right after that the permission to search form.



- 1 Q. That was immediately after you read him his rights?
- 2 A. Yes.
- 3 Q. Now, what did you say to him with regard to this
- 4 search?
- 5 A. I told him we would like to search the room in
- 6 detail. In other words, not just the things on the
- 7 top of the bed or within his reach, and that to do that
- 8 I would like for him to read this form. I read it
- 9 to him since he was handcuffed. Then I displayed
- 10 it to him. He agreed to sign it, giving us permission
- 11 to search the room in detail.
- 12 Q. You say you read a form to him?
- 13 A. Yes, sir, I did.
- 14 Q. Let me show you what is marked Government's Exhibit
- 15 14 for identification, do you recognize that?
- 16 A. Yes, sir, this is the permission to search, signed
- 17 by Mr. Gordon and myself.
- 18 Q. All right. Now, you testified that you read that to
- 19 him?
- 20 A. Yes, I did.
- 21 Q. All right. After you read that to him what, if any-
- 22 thing, did you say and what, if anything, did he say?
- 23 A. I told him it was our procedure in a case similar
- 24 to that where we had arrested a suspect for bank
- 25 robbery, we like to search in detail, and after I

1 read the form to him he said he had no objection,  
2 that he had told me where all the guns were, the  
3 two weapons he had pointed out. He said they had  
4 been legally purchased, that he had committed no  
5 crimes with them, he had no objection to our search-  
6 ing the room, and he signed the form.

7 Q. You testified you read that form to him?

8 A. Yes.

9 Q. All right. Did you ever show that to him?

10 A. Yes, I did, right after I read it.

11 Q. Do you know whether or not he read it?

12 A. He appeared to. He glanced at it before he signed  
13 it. I can only say I thought he did read it. At  
14 least he observed the form.

15 Q. Now, at that point about how long had you been in  
16 the room?

17 A. Maybe ten, fifteen minutes.

18 Q. All right. After he signed that consent form,  
19 Government's Exhibit 14, what, if anything, did you  
20 do then?

21 A. We searched the room. Primarily I did, the other  
22 man, Mr. Haynes, with me watched the prisoner, and  
23 I proceeded to search the room in detail, that is,  
24 all the drawers in the bureau of drawers, through  
25 the closet, the pockets of his clothes, his person.



1 I checked his person and found some change, as well  
2 as some small bills in his wallet, and some larger  
3 bills in the white vinyl bag, as well as some change.

4 Q. All right. Did you find anything else?

5 A. I found some ammunition in the white bag that would  
6 fit both pistols.

7 Q. All right, sir. I show you what is marked Govern-  
8 ment's Exhibit 10, do you recognize that?

9 A. This is the .38 caliber ammunition that fits the  
10 snub nose that I found on the bed. It's got the  
11 date and my initials on it.

12 Q. Where did you find Government's Exhibit 10?

13 A. Five of these .38 caliber bullets were in the  
14 pistol I found on the bed, the others were found  
15 in the white vinyl bag, wrapped up in a white piece  
16 of paper.

17 Q. All right, sir. Now, you indicated you also found  
18 some money in that white vinyl bag?

19 A. Yes, I did. There was some change -- very little --  
20 but there was some change in the bottom of the bag,  
21 it had gotten under the paste board bottom, and some  
22 larger paper bills, some ten's and twenties in the  
23 bag.

24 Q. All right, sir. Let me show you Government's Exhibit  
25 3 for identification, and ask if you can recognize

1           that?

2       A.    Yes, this is one of the twenty dollar bills I found  
3           in the white vinyl bag, whose serial number matched  
4           the serial number of one of the bait bills, the  
5           number of which we had received from Buffalo. It  
6           has my initials and the date on it, on the bill  
7           itself.

8       Q.    All right, sir. I show you Government's Exhibit 4  
9           for identification, and ask you if you recognize  
10          that?

11      A.    This is the other or the second twenty dollar bill  
12           I found in the white vinyl bag, whose serial number  
13           again matched one of the bait bills serial numbers  
14           we had received from Buffalo. My initials and the  
15           date are on it.

16      Q.    All right, sir. Now, I think you testified you found  
17           some other money?

18      A.    As I recall, we found some change in his pocket,  
19           as well as in the white vinyl bag. We found some  
20           small bills in his pocket, his wallet, and some five  
21           dollar and ten dollar bills in the white vinyl bag.  
22           As I recall, there was \$336.65 recovered, excluding  
23           these two twenty dollar bills.

24      Q.    All right, sir. And did you make some note regarding  
25           the recovery of these bills?



1 A. Yes. As I recall it, I did it by the number of the  
2 denominations, and if I am not mistaken, there were  
3 seven twenty dollar bills recovered, and there were  
4 eleven ten dollar bills. I don't remember how many  
5 five's, and four one's. I don't remember how many  
6 five's, it's listed in my recording of that evidence.

7 Q. I am going to show you what is marked as Court Exhibit  
8 23, and ask if you recognize that?

9 A. Yes, this is the dictation as recorded by a steno-  
10 grapher in our office, as I dicated eleven items  
11 of evidence. Number 8 here is the recording of the  
12 cash I recovered in that room, the \$336.65, and it  
13 breaks it down as far as how many twenties, how many  
14 ten's, how many five's, one's, and so forth, as well  
15 as change.

16 Q. All right, sir. And will you tell us how many  
17 twenties, ten's, five's and one's you recorded as  
18 having been recovered?

19 A. It says \$336.65 in cash; seven twenty dollar bills,  
20 eleven ten dollar bills, eight five dollar bills,  
21 four one dollar bills, and the two twenty dollar  
22 bills that were what we call bait bills that were  
23 recovered in the bag also.

24 Q. Let me show you what is marked Government's Exhibit  
25 5 for identification, sir. Did you yesterday at my

1 request compare the bills by denominations and number  
2 contained in that exhibit with the list that you  
3 prepared of the bills that you had recovered either  
4 from Mr. Gordon or from the room?

5 A. I did.

6 Q. Are all the bills that you initially recorded on  
7 October 6th contained in Exhibit 6?

8 A. Yes.

9 Q. Strike that, Number 5.

10 Q. Number 5, that is correct. The number of bills  
11 match the list.

12 Q. All right. I now show you Government's Exhibit 6,  
13 do you recognize that?

14 A. Yes, this is the \$2.65 in change recovered after  
15 my search, either found in the white vinyl bag or  
16 on the person of Mr. Gordon. I recognize that \$2.65  
17 as my writing.

18 Q. All right, sir. That change was found where?

19 A. Part of it was found in the bottom of the white  
20 vinyl bag where it had gotten under the paste board  
21 bottom, and part of it in the pocket of Mr. Gordon.

22 Q. All right, sir. Does that appear on the inventory  
23 list that you had prepared?

24 A. The silver change, no, does not appear on the list.

25 Q. All right. You say you recognize some of the



1 writing contained on that?

2 A. Yes, the \$2.65 figure is my writing.

3 Q. All right. Is there any question in your mind as  
4 to where you recovered that?

5 A. No.

6 Q. Were there any other items you seized as a result  
7 of your search?

8 A. Yes. In his personal belongings we recovered two  
9 Amtrack tickets.

10 Q. When you say that you recovered those in his personal  
11 belongings, where did you find them?

12 A. As I recall, they were in the white vinyl bag.

13 Q. All right. Let me show you Government's Exhibit 9  
14 for identification, do you recognize those?

15 A. They -- yes, they are the two Amtrack tickets  
16 recovered in the white vinyl bag, and we have the  
17 date and my initials on the front.

18 Q. All right, sir. Did you seize anything else as a  
19 result of your search?

20 A. Yes. There were two race track tickets, as I  
21 recall, the printing was in Spanish on the tickets.  
22 I don't recall the details on those, but they were  
23 entered.

24 Q. Anything else?

25 A. Oh, I recovered a note on a white slip of paper,

1 written in blue ink, that had "holdup" written at  
2 the top.

3 Q. Where did you find that?

4 A. That, too, was in the white vinyl bag.

5 Q. Okay. I now show you what has been marked as  
6 Government's Exhibit 8 for identification, and ask  
7 if you recognize that?

8 A. This is the note written in blue ink on the white  
9 paper that has "holdup" at the top. It has my  
10 initials and the date on the back.

11 Q. That was found where, sir?

12 A. In the white vinyl bag found in the closet.

13 Q. All right. Now, did there come a time when you left  
14 Room 721 of the YMCA?

15 A. Yes. We were concerned, it was getting close to  
16 four o'clock or right at four, and we were concerned  
17 with our obligation to get Mr. Gordon before a  
18 magistrate, and so we left right after four o'clock,  
19 bundled all the things up we had collected, and  
20 with Mr. Gordon left in a government automobile for  
21 the county jail.

22 Q. About what time did you leave?

23 A. Right after four, 4:05 P.M.

24 Q. About what time did you arrive at Room 721?

25 A. About three-thirty.



1 Q. All right, sir.

2 Q. Three-thirty. We spent a little time downstairs.  
3 Three-thirty p.m.

4 Q. All right. Between about three-thirty p.m. and  
5 four or so, you were in the room with Mr. Gordon?

6 A. Yes.

7 Q. All right. During that period of time, other than  
8 what you have already testified to, was there any  
9 conversation between you and Mr. Gordon or your  
10 fellow agent, Mr. Haynes, and Mr. Gordon that you  
11 overheard?

12 A. Primarily between Mr. Gordon and myself. I tried to  
13 go further with the interview, and asked Mr. Gordon  
14 obvious questions like where he had come from, what  
15 was he doing in Dallas, and finally got around to  
16 asking him -- I had explained to him that he was  
17 under arrest for a bank robbery, as a suspect of  
18 a bank robbery in Buffalo, New York -- and I asked  
19 him some pretty point blank questions, "Mr. Gordon,  
20 did you in fact rob the bank?" He just refused to  
21 answer the question, and others like it that would  
22 connect him with the robbery.

23 Q. All right, sir. Then you indicated that you left at  
24 four o'clock?

25 A. Yes, sir.

- 1 Q. Where did you go from there?
- 2 A. We went to the county jail, Dallas County Jail.
- 3 Q. All right. How long did it take you to get from
- 4 the Y to the Dallas County Jail?
- 5 A. No more than five, ten minutes. At the most, ten
- 6 minutes.
- 7 Q. All right. Was that by an FBI vehicle?
- 8 A. Yes.
- 9 Q. Other than the defendant, who was in the car with
- 10 you?
- 11 A. Mr. Haynes was driving, Mr. Lowell was in the front
- 12 passenger's seat, I was in the rear behind the driver,
- 13 and Mr. Gordon was in the passenger's side of the
- 14 rear seat.
- 15 Q. All right, sir. Now, in that five minute interval
- 16 on the way from the Y to the Dallas County Jail, did
- 17 you say anything to Mr. Gordon, did Mr. Gordon say
- 18 anything to you?
- 19 A. Yes. Once we were settled in the car and on our way,
- 20 I showed him that facsimile of a photograph taken
- 21 by a bank surveillance camera --
- 22 Q. Now, you are referring to what is marked Government's
- 23 Exhibit 15?
- 24 A. Yes, I am. I showed that to him in the car.
- 25 Q. You say -- all right, okay, go ahead.



1 A. And he immediately responded, "Even my mother would  
2 recognize that picture of me."

3 Q. All right. When you showed Mr. Gordon that photo-  
4 graph, Government's Exhibit 15, did you say anything  
5 to him prior to the time that you got that response  
6 from him?

7 A. No, not that I recall.

8 Q. All right. Was anything else said in that five  
9 minute interval?

10 A. Yes. I considered that an admission when he said,  
11 "Even my mother would recognize that picture of me."  
12 I pointed to the white bag in the person's hand in  
13 the picture and to the white bag I recovered in his  
14 room, and said, "Is this the same white bag you took  
15 into the bank?" He said, "Yes."

16 Q. All right. Did he say anything else at that time?

17 A. Yes, he made a couple more statements. The one  
18 thing he said was that he had decided to come to  
19 Dallas to make a new start, and as a result had left  
20 Buffalo and traveled by Amtrack to Dallas, Texas, and  
21 obtained this room at the YMCA, and that he planned  
22 to look for a job and settle down in Dallas.

23 Q. Any other conversation that you can recall between  
24 you and Mr. Gordon in the vehicle being driven by  
25 Mr. Haynes from the Y to the Dallas County Jail?

1 A. Yes. I told him we would try to obtain an appearance  
2 for him before a magistrate that afternoon, but that  
3 chances are it would be the following morning since  
4 it was after four o'clock, and I explained the purpose  
5 of this first appearance before a magistrate to him,  
6 and I told him that it would be further explained to  
7 him when he did appear before the magistrate, that  
8 he would have to spend the night in the Dallas County  
9 Jail.

10 MR. WILLIAMS: All right, sir. I have no more ques-  
11 tions.

12  
13 CROSS EXAMINATION BY MR. RINALDO:

14 Q. Mr. Meyer, I believe you testified that on October  
15 6th you had some information regarding a bank robbery  
16 which occurred in Buffalo, New York, is that correct?

17 A. That is correct.

18 Q. And how did you receive that information?

19 A. I received it from my alternate supervisor, who told  
20 me he got it by telephone from Buffalo.

21 Q. Do you recall what time you received that information?

22 A. Yes, it was, I would say -- let's see, I had to get  
23 two guys to go with me and check out a car -- I  
24 would assume two-thirty p.m., more or less, when I  
25 got the information.



1 Q. And what then did you do?

2 A. I turned to two associates on my squad and asked  
3 them to go with me. I checked out the keys to a  
4 car, went to the garage, which is a block and a half  
5 away, got the car, drove by and picked the two men  
6 up, and went to the YMCA, which is four blocks away.

7 Q. And the two men were whom?

8 A. Dodson Haynes and Philip Lowell.

9 Q. At that time did you have in your possession a photo,  
10 a photo picture?

11 A. Yes, we did. We call it a -- now, the name doesn't  
12 come to me -- it comes over a telecopier. We call  
13 it a facsimile of a photograph, from Buffalo, yes.

14 Q. You brought that to the YMCA, is that correct?

15 A. Yes, I did.

16 Q. You had a conversation with the manager of the Y?

17 A. The resident manager, Mr. Wilson, yes.

18 Q. Do you recall that conversation?

19 A. Yes. I asked him first if he had registered a man  
20 as a resident at the YMCA under the name of Herbert  
21 Davis Gordon.

22 Q. What was his response?

23 A. He said he didn't know, he would have to check. I  
24 showed him the picture, the facsimile, and he said,  
25 "He does look familiar, I believe he registered today,

1 this morning." Further checking of his records  
2 showed yes, he did have a Herbert D. Gordon registered  
3 in Room 721.

4 Q. And who was with you at that time?

5 A. Mr. Haynes.

6 Q. And again where was Mr. Lowell?

7 A. Mr. Lowell was sitting in the lobby where he could  
8 observe the elevators where people utilizing the  
9 facilities above the first floor of the YMCA had  
10 to use the elevator or the stairs.

11 Q. Did you and Mr. Haynes then proceed to go to Room 721?

12 A. Yes, after a brief conversation with Mr. Lowell, who  
13 stated he thought he saw a man that looked like  
14 Gordon go up. We proceeded up to Room 721.

15 Q. And you took the elevator?

16 A. Yes, we did.

17 Q. Then what did you do?

18 A. We walked to the room, and as we got to it, listened,  
19 heard nothing, and I knocked on the door.

20 Q. Well, Mr. Meyer, didn't you testify before that the  
21 door was open?

22 A. No, it was opened after I knocked, but when we  
23 arrived the door was closed.

24 Q. The door was closed, you knocked on the door?

25 A. Yes.



1 Q. Did you identify yourself in any way?

2 A. Not at that time, I just knocked.

3 Q. Then did somebody open the door?

4 A. Yes, Mr. Gordon opened the door.

5 Q. What did you do?

6 A. I pushed in, told him who I was and that he was  
7 under arrest based on the bank robbery warrant from  
8 Buffalo, New York.

9 Q. You pushed open the door?

10 A. Yes.

11 Q. Did you knock him over or anything?

12 A. I'm sure he went back. I didn't knock him over.  
13 We pushed -- forced our way in. I don't think he  
14 fell down.

15 Q. You then put him under arrest?

16 A. Yes, Mr. Haynes did that. I went through, and Mr.  
17 Haynes actually put the cuffs on him, as we both  
18 identified ourselves.

19 Q. Who told him he was under arrest?

20 A. Mr. Haynes and I identified ourselves, he put him  
21 under arrest.

22 Q. And did he handcuff him?

23 A. Yes, he did.

24 Q. Where were the handcuffs, in front of him or did  
25 you handcuff him behind him?

1 A. He was handcuffed in front.

2 Q. In front?

3 A. Yes.

4 Q. Did you use any other handcuffs or leg chains or  
5 anything?

6 A. No, sir, nothing.

7 Q. Now, how far away from the door were you?

8 A. At the time he was handcuffed?

9 Q. At the time he was handcuffed.

10 A. About a step behind him.

11 Q. Well --

12 A. I was very close, within a step, step and a half  
13 away.

14 Q. You pushed the door open?

15 A. Yes.

16 Q. And you took a step or a step and a half, you took  
17 Mr. Gordon in your control?

18 A. No. I more or less -- as the door swung open, he  
19 kind of went with it. As we forced our way in, I  
20 stepped past him to allow room for Haynes to come  
21 in. When the door was shut we both had him kind  
22 of cornered in the corner there so that we could  
23 control his movements.

24 Q. Were you behind him?

25 A. Yes, for a while, and then he turned around once



1 Haynes searched him briefly, just a pat down for  
2 weapons, then he turned around and I was facing him.

3 Q. Excuse me. Let's again start at the beginning so we  
4 can get a clear picture. You pushed open the door  
5 and proceeded through the doorway?

6 A. Yes.

7 Q. And Mr. Haynes followed immediately behind you?

8 A. Yes.

9 Q. And Mr. Gordon was standing there?

10 A. Yes.

11 Q. Okay. Where were you in relation to Mr. Gordon after  
12 you entered the room?

13 A. Behind him.

14 Q. Okay. Where was Haynes?

15 A. Behind him.

16 Q. You both were behind Mr. Gordon?

17 A. Yes.

18 Q. When you say behind Mr. Gordon, does that mean his  
19 back was to the door?

20 A. No, he was facing the door, his back was to us.

21 Q. Okay. He was facing the door, both of you were  
22 directly behind him?

23 A. Yes.

24 Q. Okay. Then did he turn around?

25 A. After Mr. Haynes patted him down, yes.

1 Q. Well, when you say after Haynes patted him down, you  
2 were directly behind him, okay?

3 A. Yes.

4 Q. Did you in any way physically touch him?

5 A. I don't recall touching him at that point.

6 Q. Did Haynes?

7 A. Yes.

8 Q. Prior to Haynes touching him what did he say?

9 A. He told him he was under arrest.

10 Q. Did he ask him to squat or put his hands against  
11 the wall, did he in any way give him any directions?

12 A. Yes.

13 Q. What was that?

14 A. He told him to face the wall or the door and raise  
15 his hands.

16 Q. Above his head?

17 A. I don't recall that. Raise his hands is all I  
18 remember exactly.

19 Q. And at that point did he tell him he was under  
20 arrest?

21 A. Yes.

22 Q. Okay. Then what did he do?

23 A. He then directed him to turn around and he applied  
24 the handcuffs in front.

25 Q. Did he first frisk him?



1 A. Yes.

2 Q. And would you explain the type of frisk?

3 A. The frisk wasn't a detailed one, he didn't empty his  
4 pockets, go through his shirt pocket or anything  
5 like that, or spread him out and get him off balance  
6 on the wall, he merely patted his sides and around  
7 the belt area, above the groin, for a weapon.

8 Q. And then he turned him around and cuffed him?

9 A. Yes.

10 Q. Now then, Mr. Meyer, actually then, Mr. Gordon, if  
11 I'm correct, at the point he was handcuffed he was  
12 between the door or the wall and you, is that correct?

13 A. Yes.

14 Q. Okay. Would I be correct in saying that both you  
15 and Mr. Haynes' back was to the room?

16 A. Yes.

17 Q. So in order for Mr. Gordon say to get to the bed  
18 or to get to any part of the room, he would have to  
19 pass you, is that correct?

20 A. Yes.

21 Q. Did you feel at that time that you had him sufficient-  
22 ly in your control?

23 A. Physically, yes, but I was worried about the weapons,  
24 the possibility of weapons.

25 Q. At the point you cuffed him and frisked him, did

1           you feel that you had him physically in your control?  
2    A.    I thought so, but I wasn't sure -- I didn't know the  
3           man -- I thought so, yes, that is a fair way to state  
4           it.

5    Q.    It would have been possible, Mr. Meyer, to open the  
6           door and have him step outside of the room?

7    A.    No, because the door opens inside. I believe we  
8           could have stopped him before he got out.

9    Q.    Well --

10   A.    It's possible to do so, yes.

11   Q.    How far away was Mr. Gordon from the door?

12   A.    Probably two or three feet.

13   Q.    Okay. Would it have been possible for you or Haynes  
14           to open up the door and escort Mr. Gordon out into  
15           the hallway?

16   A.    It would be tight. We could have done it.

17   Q.    What do you mean "it would have been tight"? I  
18           don't understand.

19   A.    Because this is a crowded room. That area behind  
20           the door to which you refer is the only open space  
21           in that whole room. It is crowded with the bed and  
22           the bureau drawers and the desk, two chairs, and  
23           there's not room for the TV set, it's up on the wall.

24   Q.    You took him out at some point?

25   A.    Yes.



1 Q. Then would I be correct -- am I correct in saying  
2 that the bed and everything else, the furniture, was  
3 behind you and Haynes?

4 A. You are right.

5 Q. Okay. So except for maybe a step sideways, it would  
6 have been possible to open the door and escort him  
7 out?

8 A. Yes.

9 Q. Then after you handcuffed him and frisked him, what  
10 did you do?

11 A. He knew why he was arrested, that had been said.

12 Q. I'm not concerned with that. What did you do?

13 A. I asked him if there were any firearms in the room.  
14 I believe I used the word "weapons."

15 Q. Did you advise him of his rights?

16 A. At that point, no, sir, I did not.

17 Q. Did you look around the room?

18 A. Yes, only after he told me or indicated with a  
19 head motion like there was a weapon on the bed.

20 Q. Well, would his vision be impaired by you and  
21 Haynes?

22 A. Partially.

23 Q. To the bed?

24 A. Partially, perhaps not entirely.

25 Q. Now, when he was signaling by his head motion, how

1 did you know he was signaling to the bed?

2 A. Because he was facing the bed, and with his head  
3 motion I assumed that he was motioning toward the  
4 bed.

5 Q. You assumed he was?

6 A. Yes. As a matter of fact, I think he said so. He said,  
7 "There on the bed." He had a jacket and the pistol  
8 was there. When he referred to the pistol, he said,  
9 "On the bed."

10 Q. He was fully handcuffed, right?

11 A. Yes.

12 Q. Now, then when he motioned what did you do?

13 A. I went immediately to the bed and recovered the  
14 pistol.

15 Q. Well, where was Haynes?

16 A. Watching Mr. Gordon.

17 Q. Was he right next to Mr. Gordon?

18 A. Yes. As a matter of fact, he had him under the arm.  
19 His hand was under his armpit.

20 Q. He was holding him?

21 A. Yes.

22 Q. Now, how tall is Mr. Haynes?

23 A. Five-eight at the most.

24 Q. Approximate weight?

25 A. 160 lbs.



1 Q. Now then, am I correct, Mr. Meyer, in saying you had  
2 to turn around after Mr. Gordon motioned to you to  
3 retrieve the weapon?

4 A. Yes.

5 Q. When you turned around you observed the bed?

6 A. Yes.

7 Q. Was the bed made or unmade?

8 A. It was made.

9 Q. It was made. Where was the gun?

10 A. Lying next to his jacket, in a holster, a brown  
11 holster.

12 Q. Mr. Meyer, I show you Government's Exhibit 7, is  
13 that the gun that was on the bed?

14 A. Yes, it is.

15 Q. Where was this in relation to the jacket, this gun?

16 A. They were in close proximity. Whether it was exactly  
17 alongside or partially under it, I don't know, but,  
18 as I recall, I could see at least a portion of the  
19 pistol on the bed next to the jacket. That is the  
20 best I can remember.

21 Q. Other than the jacket was there anything else on  
22 the bed?

23 A. I don't recall anything, no.

24 Q. Okay. The bed was made?

25 A. Yes.

1 Q. Was it a single bed or double?

2 A. Single bed.

3 Q. Okay. When you turned around were you able to  
4 observe the gun without Mr. Gordon telling you  
5 anything?

6 A. At least part of it, yes.

7 Q. Then what did you do?

8 A. I asked him if there were any more weapons.

9 Q. Excuse me. Did you walk over to the bed?

10 A. Yes, it was only one step. I took a step, got the  
11 pistol off the bed, yes.

12 Q. Did you take the jacket off the bed?

13 A. No, I don't recall taking the jacket.

14 Q. Did you search through the jacket?

15 A. No.

16 Q. Well, then what did you do?

17 A. I asked Mr. Gordon if there were any other weapons  
18 in the room.

19 Q. Where was Mr. Gordon at that time?

20 A. Still behind the door there with Mr. Haynes.

21 Q. Was he standing?

22 A. Yes, he was standing.

23 Q. What did you ask him?

24 A. If there were any more weapons in the room beside  
25 the one I found on the bed.



1 Q. What did he say?

2 A. He said yes, there was another one in the bag in the  
3 closet.

4 Q. Then what did you do?

5 A. I went immediately to the bag in the closet and  
6 recovered the ~~9 millimeter~~ automatic.

7 Q. That is this gun?

8 A. Yes.

9 Q. Government's Exhibit 27, is that correct?

10 A. Yes, it is.

11 Q. Then, Mr. Meyer, what did you do after you retrieved  
12 the gun?

13 A. After I retrieved the gun I sat down on the bed with  
14 Mr. Gordon, took out a printed copy of his rights,  
15 and read those rights to him, allowed him to look  
16 at and read those rights, and then asked him to sign,  
17 which he refused to do.

18 Q. Did you or Mr. Haynes read him the rights?

19 A. I did.

20 Q. This was while you were seated on the bed?

21 A. Yes, sir.

22 Q. Then what occurred after you read him his rights,  
23 Mr. Meyer?

24 A. After I read him his rights he refused to sign the  
25 waiver of those rights, but agreed to answer

1 questions of his choice, that is, he said he under-  
2 stood, but that he would answer questions if he  
3 could. So I phrased several questions to him that  
4 had to do with his possible involvement in this bank  
5 robbery.

6 Q. Do you recall what the questions were?

7 A. Yes. One was "Did you rob the bank?"

8 Q. What was his response?

9 A. He just refused to answer the question. He said  
10 at that time he better not answer any questions  
11 without an attorney.

12 Q. At that point did he request an attorney?

13 A. No, he did not.

14 Q. What exactly did he say?

15 A. He just said he didn't think he should answer that  
16 question --

17 Q. Would you read back --

18 A. -- without an attorney. He said that, as I recall  
19 it.

20 Q. Then did you continue to interrogate him?

21 A. I asked another question or two, which he refused  
22 to answer also.

23 Q. Do you recall what those questions were?

24 A. Not exactly, no, but they were pertinent questions  
25 that -- you know, his possible involvement in the



1 bank robbery.

2 Q. Do you recall what his answer was? ✓

3 A. He refused to answer.

4 Q. Did he likewise say unless he had an attorney?

5 A. I don't recall that he repeated that. He did refuse  
6 to answer.

7 Q. Then what occurred?

8 A. I then explained to Mr. Gordon it was our normal  
9 procedure to search the room, and I said, "If you  
10 have no objection, we will search after you have  
11 read this permission to search." I pulled another  
12 folded form out of my pocket, which we utilize, that  
13 has to do with explaining to him his right to refuse  
14 the search of the room. He said he would have no  
15 objection, and signed that form.

16 Q. Well, did he understand what he was signing?

17 A. He said he did. He said he understood.

18 Q. Do you know anything about Mr. Gordon?

19 A. Well, you want to get specific?

20 Q. Do you know anything about his educational background?

21 A. No.

22 Q. Do you know anything about his personal life?

23 A. Only what he told me, and a review of his arrest  
24 record.

25 Q. Well, when you say, "only what he told me," did

1           you have any conversation with him?

2       A.     Yes.

3       Q.     Do you recall what those conversations were?

4       A.     He said he had just gotten out of prison a year or  
5           so before that, and had served time on parole in  
6           the Buffalo area and, as I remember, he named the  
7           prison, Attica Prison.

8       Q.     Well, when were the conversations, were they after  
9           the three questions you asked?

10      A.     I believe this about Attica Prison came -- I don't  
11           remember -- it could have been in the car, it could  
12           have been in the room. I don't remember where he  
13           actually told me that. I would be wrong to try to  
14           pinpoint what I don't remember.

15      Q.     You don't recall if you had any conversation with  
16           Mr. Gordon prior to him signing this consent which  
17           is marked as Government's Exhibit 14?

18      A.     Yes, I asked him some questions about the bank  
19           robbery, which he refused to answer.

20      Q.     Other than those three questions?

21      A.     I don't recall any more, no.

22      Q.     Where was Mr. Gordon seated, on the bed?

23      A.     Yes, toward the head of the bed, which is closest  
24           to the door.

25      Q.     He was handcuffed?



1 A. Yes.

2 Q. Where was Haynes?

3 A. Standing beside him.

4 Q. Where were you?

5 A. Seated on the foot of the bed.

6 Q. So then Mr. Haynes was towering over Mr. Gordon, you  
7 were seated next to Mr. Gordon, is that correct?

8 A. Yes, as much as a five foot seven man can tower, he  
9 stood beside him.

10 Q. And that was at the point at which you asked him to  
11 sign the consent form?

12 A. Somewhere along there, yes.

13 Q. You asked him to sign the consent form after he  
14 indicated to you that he would not sign the waiver  
15 form unless he had an attorney, is that correct?

16 A. Right.

17 Q. After he signed the consent form then what did you  
18 do, Mr. Meyer?

19 A. I searched the room in detail.

20 Q. Okay. Let's describe the room. How big is it?

21 A. It is a narrow room, a long, narrow room, seven feet  
22 wide by ten and a half feet long.

23 Q. So if we walk in the doorway of the room, it would  
24 be narrow, is that correct, and long, around ten  
25 feet?

- 1 A. Yes.
- 2 Q. It would be around seven feet wide?
- 3 A. Yes.
- 4 Q. Do you recall where the bed was in relation to the
- 5 room?
- 6 A. Yes. As you walk in the door the bed was on the left.
- 7 Q. On the left?
- 8 A. Yes.
- 9 Q. What was on the right?
- 10 A. A bureau of drawers.
- 11 Q. Where was the closet?
- 12 A. On the right before you come to the bureau of drawers.
- 13 As you come in the door, immediately on your right
- 14 was the closet.
- 15 Q. When you walk in the door, immediately on your right
- 16 is a closet?
- 17 A. Yes.
- 18 Q. And how far away from the door would you say the
- 19 bed was?
- 20 A. Four feet.
- 21 Q. Okay. Was there a door on the closet?
- 22 A. Yes.
- 23 Q. Was the door closed?
- 24 A. I don't recall.
- 25 Q. Well, there was a door, you don't recall whether it



1 it was closed?

2 A. I went to look at the room before I came here to  
3 this hearing. There is a full door on the closet,  
4 every bit as big as the door that enters the room.  
5 I don't recall at the time of the arrest whether it  
6 was open or closed.

7 Q. You went into the closet to retrieve a gun, is that  
8 correct?

9 A. Yes.

10 Q. And the gun was in the white bag which is marked  
11 Government's Exhibit 13, this bag?

12 A. Yes.

13 Q. Where was this bag in the closet?

14 A. On the floor. On the right, as you face the closet,  
15 on the floor.

16 Q. On the floor to the right?

17 A. Yes.

18 Q. Do you recall if the bag was zipped up?

19 A. As I recall, it was already open.

20 Q. You reached in and retrieved the gun?

21 A. Yes.

22 Q. Did you leave the bag there on the floor?

23 A. I believe so, because I put the weapon on top of the  
24 bureau of drawers with the other weapon. I left the  
25 bag there.

- 1 Q. Did you search the bag to see if there was any other  
2 guns?
- 3 A. I could see there was no others.
- 4 Q. You left the bag in the closet?
- 5 A. Yes.
- 6 Q. On the floor?
- 7 A. Yes.
- 8 Q. You put the gun on the dresser?
- 9 A. Yes.
- 10 Q. Now --
- 11 A. After I unloaded it first, as I had done with the  
12 other, and placed them both on top of the bureau  
13 there.
- 14 Q. Then you got Mr. Gordon to sign a consent form and  
15 you went back into the closet?
- 16 A. Yes.
- 17 Q. Then you retrieved the bag?
- 18 A. Yes.
- 19 Q. You then took the bag out of the closet?
- 20 A. Yes.
- 21 Q. Did you look in the bag while it was in the closet?
- 22 A. Not on that occasion. I took it out of the closet.
- 23 Q. Where did you put it?
- 24 A. On top of the bureau and emptied it so that I could  
25 go through the contents.



- 1 Q. What did you find in there?
- 2 A. I found the Amtrack tickets, the demand note, ammunit-
- 3 ion for both pistols, some soiled underwear. That
- 4 is all I can remember.
- 5 Q. Did you search the rest of the room?
- 6 A. Yes, I did.
- 7 Q. How long were you in the room, Mr. Meyer?
- 8 A. We were there less than a half hour. I would say
- 9 twenty-five minutes.
- 10 Q. How long did it take you, if you recall, to search
- 11 the room after you located the white vinyl bag in
- 12 the closet?
- 13 A. Not anymore than ten minutes.
- 14 Q. Did you engage in conversation with Mr. Gordon?
- 15 A. I don't recall any at that time.
- 16 Q. Who did the actual searching, you or Haynes?
- 17 A. I did.
- 18 Q. Where was Haynes?
- 19 A. He was watching Mr. Gordon.
- 20 Q. Where was Mr. Gordon?
- 21 A. Seated on the bed.
- 22 Q. Was he still handcuffed?
- 23 A. Yes.
- 24 Q. Now, I believe it was your testimony that all of the
- 25 money, the two twenty dollar bills, marked as

1 Government's Exhibits 3 and 4, Government's Exhibit  
2 5, were found in the bag, in the white vinyl bag?

3 A. Only two of those. They have my initials on the  
4 front. Two of the bait bills were found in the  
5 bag. You will see my L.M. on the front.

6 Q. Government's Exhibits 3 and 4?

7 A. Yes. There is my initials on the front of each.

8 Q. This was in the white vinyl bag?

9 A. Yes.

10 Q. Mr. Meyer, I show you Government's Exhibit 8, was  
11 this also in the white vinyl bag?

12 A. Yes, it was.

13 Q. Do you recall where the Amtrack tickets were located?

14 A. As I recall, they were in the bag also, the white  
15 vinyl bag.

16 Q. I believe Government's Exhibit 6, the change in the  
17 amount of two sixty-five, was also in the white --

18 A. Not all of it. Some of it was recovered from his  
19 pockets, and there was a small amount recovered from  
20 the bag.

21 Q. Where did you say this money, \$294, marked as  
22 Government's Exhibit 5, was located?

23 A. Part of it was found on his person, part of it was  
24 found in the bag.

25 Q. When was it found on his person? The amount that



1 was found on his person, when?

2 A. I'm trying to recall. I'm sure it was after we  
3 read him his rights, and we searched his person in  
4 detail, prior to the time I gave him -- read the  
5 room search permission slip to him.

6 Q. Now, Mr. Meyer, when did you leave Room 721?

7 A. I would think approximately three-thirty.

8 Q. Well, I think you testified you arrived at three-  
9 thirty.

10 Q. No, we arrived shortly after three, 3:05 or 3:10,  
11 somewhere in that area. We were there like twenty-  
12 five minutes. I assume we left around three-thirty.

13 Q. You arrived at three-ten and you left about three-  
14 thirty?

15 A. Yes. Maybe a little ahead of three-ten. Three-five,  
16 as I recall, somewhere in that area.

17 Q. You and Mr. Haynes and Mr. Gordon came out of the room  
18 and went into an FBI vehicle, is that correct?

19 A. Right. We had to go down the elevator, of course,  
20 and the vehicle was in front of the YMCA Building,  
21 yes.

22 Q. And also did Mr. Lowell accompany you?

23 A. Mr. Lowell, yes, to the jail.

24 Q. Now, would you just again testify as to where you  
25 were seated in the automobile?

1 A. Yes. Mr. Gordon and I were in the rear seat. I  
2 was behind the driver, he was behind the passenger.  
3 In the front seat Mr. Haynes was driving, Mr. Lowell  
4 was in the front passenger's seat.

5 Q. Now, I believe then you continued to have conver-  
6 sations with Mr. Gordon?

7 A. Yes, conversation only after I showed him the  
8 facsimile photograph from the bank, to which he  
9 responded, "Even my mother would recognize me in  
10 that picture."

11 Q. Do you recall then what you said?

12 A. Yes. I pointed to the white bag in the picture and  
13 compared it to the one we had recovered in the room,  
14 and said, "Is this the bag -- indicating the one  
15 from the room -- is this the bag you took into the  
16 bank?" He said, "Yes."

17 Q. Well, Mr. Meyer, I show you Government's Exhibit  
18 15, which is the facsimile, how did you know that  
19 was a bag?

20 A. Primarily from the information received by telephone  
21 from Buffalo. They had described such a bag, even  
22 said it was trimmed in red. I assumed from their  
23 information that the witness had given them that  
24 information from their experiences in the bank, not  
25 from the photograph. They hadn't seen the photograph,



1 but when they furnished us that information from  
2 Buffalo it did include a description of a white  
3 vinyl bag carried by the robber at the time he was  
4 in the bank.

5 Q. You believe that is the white vinyl bag?

6 A. I didn't know, that is why I asked him. I pointed  
7 to it and asked him if that is the bag, the same  
8 one he carried into the bank. He confirmed it.

9 Q. What was his response?

10 A. His response was an affirmative yes.

11 Q. Then what occurred?

12 A. After that point I believe we got into the conver-  
13 sation of the weapons. I asked him then, "Have you  
14 used those weapons to commit any other crime?" He  
15 said, "No, the weapons were purchased legally, they  
16 have never been used." So I then got into the purpose  
17 of our hurrying to the jail, to try to catch the  
18 magistrate before he got home after four o'clock,  
19 and explained to him the purpose of a first appearance,  
20 and so forth.

21 Q. Well, would you continue to interrogate an individual  
22 after he had expressed a desire to have an attorney,  
23 is that normally your procedure?

24 A. No. He expressed no desire for an attorney. He  
25 merely stated that he didn't want to answer that

1 question without an attorney.

2 Q. Which question?

3 A. The one I had posed to him in the room.

4 Q. When you showed him Government's Exhibit 12, and  
5 read him his rights, didn't he say he would rather  
6 not sign anything until he consulted with an attorney?

7 A. Right, exactly, but he didn't refuse to talk to us.  
8 I explained to him that just because he didn't sign  
9 that doesn't mean that he could not talk to us,  
10 that was a choice he had to make.

11 Q. When did you explain this to him?

12 A. Prior to posing any questions to him.

13 Q. When, in the room?

14 A. Yes.

15 Q. Or in the car?

16 A. In the room.

17 Q. You never said anything to him in the car, did you?

18 A. About his rights you mean?

19 Q. Right.

20 A. I don't recall any, no.

21 Q. You didn't refresh his recollection about his rights,  
22 did you?

23 A. I don't recall doing that, no, sir.

24 Q. How long were you in the automobile, Mr. Meyer?

25 A. Ten minutes at the most.



- 1 Q. And where did you take Mr. Gordon?
- 2 A. From the YMCA to the Dallas County Jail.
- 3 Q. Did you prepare any notes in connection with this
- 4 incident that occurred on October 6th, Mr. Meyer?
- 5 A. Yes, I took notes, but they have since been transcribed
- 6 into a report.
- 7 Q. Is that the Form 302?
- 8 A. Yes, it is.
- 9 Q. Mr. Meyer, I show you Court Exhibit 19, is that the
- 10 Form 302 prepared by you?
- 11 A. Yes, dictated by myself to a stenographer who tran-
- 12 scribed it, yes.
- 13 Q. That is, dictated from your notes?
- 14 A. Yes.
- 15 Q. Which have been since destroyed?
- 16 A. Yes.
- 17 Q. Is there any mention in that Form 302 about the
- 18 admission made by Mr. Gordon?
- 19 A. Yes.
- 20 Q. And is there any information in that 302 relative to
- 21 where that admission took place?
- 22 A. Negative. It says that he was interviewed in his
- 23 room at the YMCA. In a separate paragraph about
- 24 his admission, it doesn't specifically name the
- 25 place.

1 Q. Is there any indication in this form as to where you  
2 found the weapons?

3 A. No, just found in his possession.

4 Q. Is there any indication in that form as to Mr.  
5 Gordon consenting to a search of his room?

6 A. No, there isn't.

7 Q. Wouldn't you consider that normal to put in a Form  
8 302?

9 A. Yes. I believe it is on a separate 302, where I  
10 list all the evidence.

11 Q. I meant the fact that he consented to the search.

12 A. Yes, and I think if you will -- there is another  
13 302 that lists the evidence. If it is mentioned, it  
14 should be on that one.

15 Q. Do you have that 302?

16 A. I don't have it. It should be in your report.

17 MR. RINALDO: Does the Government have the 302  
18 that he is referring to?

19 MR. WILLIAMS: Your Honor, despite the fact that this  
20 is only a hearing, I have marked and given  
21 to Mr. Rinaldo all 3500 material. They  
22 are marked as Court Exhibits. Here is one  
23 marked 23, which is an inventory. There is  
24 an interview log and a couple of other 302's  
25 made by Mr. Meyer.



1 MR. RINALDO: Well, is this the only other 302?

2 MR. WILLIAMS: No. You have an exhibit list. I  
3 think the better way to proceed is to let  
4 the attorney ask the question of the witness,  
5 and if he needs his memory refreshed by  
6 referring to the exhibits, we can do that.

7 BY MR. RINALDO:

8 Q. Do you recall putting in any of the 302 forms  
9 information relative to where the weapons were found?

10 A. Specifically in the room where they were found?

11 Q. Yes.

12 A. No.

13 Q. Did you put in any of the 302's the fact that Mr.  
14 Gordon consented to a search?

15 A. I'm not sure. I would have to check the 302's  
16 myself.

17 MR. WILLIAMS: Your Honor, I object. The question  
18 is not what is reported in the 302's, the  
19 question is what his testimony is.

20 MR. RINALDO: Your Honor, it is relevant to show  
21 that Mr. Meyer prepared a 302 from his  
22 original notes, and from my review of all  
23 of the 302's, there is nothing in the notes  
24 which indicates in any way that Mr. Gordon  
25 consented to the search.

1 THE COURT: It seems to me there is some question  
2 between counsel whether you have all the  
3 302's in your immediate possession to be  
4 shown to the witness.

5 BY MR. RINALDO:

6 Q. Mr. Meyer, I show you Court Exhibit 23 and Court  
7 Exhibit 21, are these reports prepared by you or  
8 dictated by you?

9 A. Yes.

10 Q. Now, use those to refresh your recollection. Is  
11 there anything in those reports to indicate that  
12 Mr. Gordon consented to a search?

13 A. Yes, there is.

14 Q. Where is that?

15 A. Court Exhibit 23. "Shortly thereafter Gordon signed  
16 a written consent to search his room and closet. The  
17 following items were collected as possible evidence."

18 Q. Is there anything in these reports as to where the  
19 guns were located?

20 A. Just generally in the room. It doesn't say specif-  
21 ically where they were found, no.

22 Q. Okay. Is there anything in those reports indicating  
23 where Mr. Gordon made this admission?

24 A. Yes, on another 302, where it says, "Gordon admitted  
25 committing the robbery mentioned above alone, and



1 riding from Buffalo, New York to Dallas, Texas by  
2 Amtrack train."

3 Q. No, my question to you is, is there anything in here  
4 that the admission was made in the automobile on the  
5 way to the magistrate?

6 A. No.

7 MR. RINALDO: Could we have about a five minute  
8 recess?

9 THE COURT: We will take a ten minute recess.  
10 Step down, Mr. Meyer.

11 (Thereupon the court was in recess  
12 at 12:45 P.M.)

13 (Proceedings resumed, pursuant to  
14 recess, commencing at 1:10 P.M. Counsel  
15 present, defendant present.)

16  
17 BY MR. RINALDO:

18 Q. Mr. Meyer, just a few brief questions. When you  
19 knocked on the door of Room 702 --

20 THE COURT: 721.

21 BY MR. RINALDO:

22 Q. I'm sorry. 721, was your gun drawn?

23 A. No.

24 Q. Was Haynes' gun drawn?

25 A. No.

1 Q. After pushing your way into the room or at any time  
2 while you were in the room as your gun or Mr. Haynes'  
3 gun drawn?

4 A. No.

5 MR. RINALDO: I have nothing further, your Honor.

6 THE COURT: Mr. Williams?

7 MR. WILLIAMS: I have a few more questions, yes.

8 REDIRECT EXAMINATION BY MR. WILLIAMS:

9 Q. Mr. Meyer, do you recall what time you initially  
10 arrived at the YMCA?

11 A. We left the office about two-thirty. I would assume  
12 we arrived right after three, 3:05.

13 Q. All right. Then there came a time when you went up to  
14 Room 721, correct?

15 A. Right.

16 Q. What time did you get up there?

17 A. I spent some time with Mr. Wilson looking through  
18 the records, and so forth, showing the facsimile.  
19 We got upstairs about three-thirty. About twenty  
20 minutes we were with him.

21 Q. What time did you leave the room upstairs to go to  
22 the Dallas County Jail?

23 A. Shortly after four.

24 Q. All right, okay.

25 THE COURT: Is that all?



1 MR. WILLIAMS: No, I have a few more questions, your  
2 Honor.

3 BY MR. WILLIAMS:

4 Q. Mr. Meyer, with reference to Government's Exhibit 12,  
5 which is entitled Interrogation-Advice of Rights,  
6 there came a time when you actually exhibited that to  
7 Mr. Gordon?

8 A. Correct.

9 Q. I think you testified that he did not sign that?

10 A. That is correct.

11 Q. What, if anything, did he say to you about that after  
12 he saw that form and he so advised you that he was  
13 not going to sign it, what were his words?

14 A. He merely said that he thought it would be unwise  
15 for him to sign that without consulting an attorney.

16 Q. All right. Did he say anything else to you?

17 A. I went on to explain that although he didn't sign  
18 it, it doesn't mean that he can't answer questions  
19 of his choice, which he agreed to do verbally. He  
20 did not refuse to talk to us. He just refused to  
21 sign the form.

22 MR. WILLIAMS: All right. I have no further questions.

23 RECROSS EXAMINATION BY MR. RINALDO:

24 Q. Mr. Meyer, after you explained to him that, although  
25 he did not sign the form he could talk with you, did

1 he indicate any desire to talk to you?

2 A. How do you mean? I don't know what you mean by  
3 "indicate a desire."

4 Q. The question is self explanatory. You say you  
5 showed him Government's Exhibit 12, you asked him  
6 if he wanted to sign a waiver, he indicated to you  
7 that it would be unwise for him to sign without  
8 consulting his attorney, then you continued to  
9 engage in conversation with him, and I believe your  
10 testimony was you indicated to him although he  
11 didn't sign, it did not mean he could not refuse  
12 to talk to you, is that it? What were your exact  
13 words?

14 A. No, I didn't infer that he could not refuse to talk  
15 to us. On the contrary, I thought he understood  
16 that he could elect to sign or not to sign, he could  
17 elect to talk or not to talk.

18 Q. How was it that you thought he understood, what led  
19 you to believe that?

20 A. By his statement that he didn't feel he should sign  
21 that without consulting an attorney, indicating he  
22 had an aversion to signing at that point, but he  
23 showed no aversion to talking, answering questions  
24 of his choice.

25 MR. RINALDO: I have nothing further. Thank you.



1 BY MR. WILLIAMS:

2 Q. Was the situation that some questions were answered  
3 by him?

4 A. Yes.

5 Q. Some were not?

6 A. Yes.

7 MR. WILLIAMS: All right. I have no further questions.

8 BY MR. RINALDO:

9 Q. Mr. Meyer, wasn't your testimony that you actually  
10 only asked him three questions?

11 A. That is all I could recall at that point, yes.

12 MR. RINALDO: Thank you. No further questions.

13 MR. WILLIAMS: I have no more witnesses.

14 THE COURT: All right.

15 (Witness excused.)

16

17 \* \* \* \* \*

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Decision of Court

1 PROCEEDINGS OF JANUARY 30, 1976, COMMENCING AT 9:15 A.M.

2

3

(Counsel present, defendant present,  
4 jury panel present.)

5

6

(Thereupon the following conference  
7 ensued at the side bar:

8

THE COURT:

9

Now, following yesterday's hearing,  
I reserved decision relative to the  
10 admissibility of the two guns which were  
11 found in the YMCA room. I have decided  
12 that the 9 millimeter gun which was found  
13 in the closet, is not to come into  
14 evidence. The other gun, which was on  
15 the bed, can.

16

MR. RINALDO:

17

Your Honor, I am a little confused as  
to the reason why the second gun would be  
18 suppressed and not the first.

18

19

THE COURT:

20

The first gun was very close to  
where he was, and it comes within the  
21 justification of putting down danger, I  
22 am sure, it was one step away from where  
23 he was and, consequently, they had a duty  
24 to themselves really to protect themselves  
25 and to get that gun. The other one did not

21

22

23

24

25



1 present that danger. Now, I know that in  
2 the testimony there is nothing there  
3 indicating the posture of this gun, where  
4 it was. There was something about a  
5 jacket being on the bed, but there is no  
6 testimony saying whether this was in plain  
7 view or not. I am assuming it was not in  
8 plain view. There was sufficient justifi-  
9 cation to ask him about a weapon and  
10 grabbing the one that was right there.

11 MR. RINALDO:

For the record, I would appreciate  
12 it if it would be possible to have your  
13 reasoning on why the bag and the other  
14 evidence seized would not be suppressible.

15 THE COURT:

All subject to the voluntary consent.

16  
17 (Thereupon the conference at the  
18 side bar was terminated.)  
19

20 CLERK OF THE COURT:

Criminal 75-234, the United States  
21 versus Herbert Davis Gordon.

22 MR. WILLIAMS:

The Government is ready.

23 MR. RINALDO:

The defense is ready, your Honor.

24 THE COURT:

All right. Ladies and gentlemen,  
25 this is a criminal case. The Government

## CHARGE OF THE COURT

THE COURT:

Ladies and gentlemen, now I will give you the instructions on the principles of law which will govern your deliberations, and I will try to keep this brief, but of necessity there are certain things which I am required to cover and which will take a little bit of time.

Now, the lawyers have said and I have said, and I want to remind you, that it is your duty and yours alone to determine what the facts are in the case. Of course, that includes, basically, the guilt or innocence of the defendant, Herbert Davis Gordon, in this case as charged.

I may refer briefly to my recollection of the facts at some point or another, but if I do it is merely to assist you in understanding the rules of law which I am giving to you. You should not consider any reference that I have made during the trial as in any way indicative of the verdict that you should render. The



1 rulings that I have made upon objections  
2 are not to be taken as any expression  
3 of the opinion of mine on the facts of  
4 the case. You should rely wholly on  
5 your own recollection of what the evidence  
6 in the case shows, and do not be influenced  
7 by any remark that I or counsel may have  
8 made in the course of the trial or in the  
9 course of argument or in the course of  
10 these instructions.

11 Now, I instruct you that as a matter  
12 of law you are not to be influenced by  
13 the fact that the Government of the  
14 United States is a party to this action,  
15 for I charge you that the Government is  
16 to be considered the same as any other  
17 party, and that the Assistant United  
18 States Attorney, Mr. Williams, is to be  
19 considered as any other lawyer would be  
20 considered.

21 Also, it is your duty merely to  
22 determine the guilt or innocence of the  
23 defendant, you should not concern yourself  
24 in any way with the punishment the  
25 defendant may receive if convicted, and

1 you are not to speculate concerning it.

2 The indictment which you will have  
3 with you in the jury room charges that  
4 the defendant, Herbert Gordon, with  
5 three separate criminal acts. It is  
6 charged in count one of the indictment,  
7 and I will quote it:

8 "On or about the 3rd day of October  
9 1975, in the Western District of New York,  
10 the defendant, Herbert Davis Gordon, did  
11 willfully and knowingly and unlawfully,  
12 and by force, violence and intimidation,  
13 take from the person and presence of  
14 Eileen Batt, and others, approximately  
15 \$685 in money, belonging to and in the  
16 care, custody, control, management and  
17 possession of the First Federal Savings  
18 & Loan Association of Rochester, New York,  
19 Homestead Division, 360 Pearl Street,  
20 Buffalo, New York, the deposits of which  
21 were then insured by the Federal Savings  
22 & Loan Insurance Corporation; all in  
23 violation of Title 18, United States Code,  
24 Section 2113(a)."

25 That section of the law provides in



1                   pertinent part:

2                   "Whoever by force and violence or  
3                   by intimidation takes from the person or  
4                   presence of another any money belonging  
5                   to or in the care, custody, control,  
6                   management or possession of any savings  
7                   and loan association shall be guilty of  
8                   an offense against the laws of the United  
9                   States."

10                  There are three essential elements  
11                  which must be proved beyond a reasonable  
12                  doubt to establish the offense charged  
13                  in count one of the indictment. First,  
14                  that the money taken belonged to or was  
15                  in the care, custody, control, management  
16                  or possession of a savings and loan  
17                  association whose deposits were insured  
18                  by the Federal Savings & Loan Insurance  
19                  Corporation. Second, the act or acts of  
20                  taking such money from the person or  
21                  presence of another was by force and  
22                  violence or by intimidation. Third, that  
23                  the doing of such act or acts was done  
24                  willfully.

25                  The law recognizes two kinds of

1 possession, actual possession and  
2 constructive possession. A person who  
3 knowingly has direct physical control  
4 over a thing at a given time is in actual  
5 possession of it. A person who, although  
6 not in actual possession, knowingly has  
7 both the power and the intention at a  
8 given time to exercise dominion or control  
9 over a thing, either directly or through  
10 another person or persons, is then in  
11 constructive possession of it. The law  
12 recognizes also that possession may be  
13 sole or joint. If one person alone has  
14 actual or constructive possession of a  
15 thing, possession is sole. If two or  
16 more persons share actual or constructive  
17 possession of a thing, possession is  
18 joint.

19 If you should find beyond a reason-  
20 able doubt, and I will define that term  
21 later, from the evidence in the case that  
22 at the time and place of the alleged  
23 offense the Homestead Bank, either alone  
24 or jointly with others, had actual or  
25 constructive possession of the money



1 described in the indictment, then you  
2 may find that such money was in the  
3 possession of the Homestead Bank within  
4 the meaning of the word "possession" as  
5 used in the law and these instructions.

6 Now, you will note that I have said  
7 that the acts charged must have been done  
8 willfully. An act is done willfully if  
9 it is done voluntarily and purposely,  
10 and with the specific intent to do that  
11 which the law forbids, that is to say,  
12 with a purpose either to disobey or dis-  
13 regard the law, and particularly to do  
14 the act charged.

15 To take or attempt to take by intimi-  
16 dation means willfully to take or to  
17 attempt to take by putting in fear of  
18 bodily harm. Such fear must arise from  
19 the willful conduct of the accused,  
20 rather than from some mere temperamental  
21 timidity of the victim. However, the  
22 fear of the victim need not be so great as  
23 to result in terror, panic or hysteria.

24 A taking or attempted taking by  
25 intimidation must be established by proof

1 of one or more acts or statements of the  
2 accused which were done or made in such  
3 a manner or under such circumstances as  
4 would produce in the ordinary person a  
5 fear of bodily harm. However, actual  
6 fear need not be proved. Fear, like  
7 intent, may be inferred from statements  
8 made and acts done or admitted by the  
9 accused, and by the victim as well, and  
10 from all of the surrounding circumstances  
11 shown by the evidence in the case. That  
12 deals with count one.

13 Count two of the indictment charges  
14 as follows:

15 "On or about the 3rd day of October  
16 1975, in the Western District of New York,  
17 the defendant, Herbert Davis Gordon, did  
18 willfully and knowingly and unlawfully  
19 take and carry away, with intent to steal  
20 and purloin, from the First Federal  
21 Savings & Loan Association of Rochester,  
22 New York, Homestead Division, 360 Pearl  
23 Street, Buffalo, New York, the sum of  
24 \$635 in money belonging to and in the care,  
25 custody, control, management and possession



1 " of said bank, the deposits of which were  
2 then insured by the Federal Savings &  
3 Loan Insurance Corporation; all in  
4 violation of Title 18, United States  
5 Code, Section 2113(b)."

6 That Section 2113(b) provides in  
7 pertinent part as follows:

8 "Whoever takes and carries away,  
9 with intent to steal or purloin, any  
10 money exceeding \$100 belonging to or in  
11 the care, custody, control, management or  
12 possession of any savings and loan  
13 association shall be guilty of an offense  
14 against the laws of the United States. "

15 The elements of the crime charged  
16 in count two, and each of which must be  
17 proved beyond a reasonable doubt to  
18 establish the offense charged, are, first,  
19 that the money taken belonged to or was  
20 in the care, custody, control, management  
21 or possession of a savings and loan  
22 association whose deposits were insured  
23 by the Federal Savings & Loan Insurance  
24 Corporation. Second, the act or acts of  
25 taking or carrying away such money of a

1 value in excess of \$100, as charged in the  
2 indictment. Third, the doing of such  
3 act was with the intent to steal or pur-  
4 loin. Again, you will note that the act  
5 or acts must have been done with specific  
6 intent, that is, they must have been done  
7 voluntarily and purposely, and with  
8 specific intent to steal or purloin.

9 You will note that Subdivision (a)  
10 of the Statute, which was what I referred  
11 to when I talked about count one of the  
12 indictment, requires that the taking from  
13 a savings and loan association be accom-  
14 plished by force and violence or by  
15 intimidation. However, neither force nor  
16 violence nor intimidation need be estab-  
17 lished to prove a violation of Subdivision  
18 (b) of the Statute, that is the offense  
19 which I have discussed in connection with  
20 count two of the indictment. It is merely  
21 the taking and carrying away of money  
22 from an insured savings and loan associa-  
23 tion with the requisite intent that is  
24 required to sustain a conviction under  
25 count two of the indictment. Thus, you



1 will readily see that if a person commits  
2 an offense under Subdivision (a), that is,  
3 by use of force and violence or by  
4 intimidation, he may also by the taking  
5 and carrying away of money with the  
6 requisite intent be guilty of a violation  
7 or an offense under Subdivision (b) of  
8 the Statute.

9 A person takes and carries away  
10 money with the intent to steal or purloin  
11 when he obtains property belonging to  
12 another without permission and with the  
13 intent to deprive the owner of the property.

14 Finally, we have count three of the  
15 indictment which says that:

16 "On or about the 3rd day of October  
17 1975, in the Western District of New York,  
18 the defendant, Herbert Davis Gordon, by  
19 force, violence and intimidation did take  
20 from the person and presence of Eileen  
21 Batt approximately \$685 in money belonging  
22 to and in the care, custody, control,  
23 management and possession of the First  
24 Federal Savings & Loan Association of  
25 Rochester, New York, Homestead Division,

1 "360 Pearl Street, Buffalo, New York, the  
2 deposits of which were then insured by  
3 the Federal Savings & Loan Insurance  
4 Corporation, and Herbert Davis Gordon in  
5 committing the aforesaid offense did  
6 assault Eileen Batt and put in jeopardy  
7 the life of Eileen Batt with the use of  
8 a weapon, to wit, a handgun; all in  
9 violation of Title 18, U. S. Code,  
10 Section 2113(d)."

11 That section provides in pertinent  
12 part: "Whoever in committing or in  
13 attempting to commit any offense charged  
14 in Subsection (a) -- which was charged  
15 to you under count one of the indictment --  
16 assaults any person or puts in jeopardy  
17 the life of any person by the use of a  
18 dangerous weapon or device shall be  
19 guilty of an offense against the laws of  
20 the United States."

21 In order to sustain its burden under  
22 count three of the indictment, the  
23 Government must prove each of four essen-  
24 tial elements. First, the act or acts of  
25 taking from the person or presence of



1 another money belonging to or in the care,  
2 custody, control, management or possession  
3 of a savings and loan association whose  
4 deposits are insured by the Federal  
5 Savings & Loan Insurance Corporation.  
6 Second, the act or acts of taking such  
7 money by force or violence or by means  
8 of intimidation. Third, the act or acts  
9 of assaulting or putting in jeopardy the  
10 life of any person by the use of a  
11 dangerous weapon or device while engaged  
12 in stealing such money from a savings and  
13 loan association, as charged. Four, doing  
14 such act or acts willfully.

15 Now, as stated before, the burden is  
16 always upon the prosecution, the Government,  
17 to prove beyond a reasonable doubt every  
18 essential element of the crime charged,  
19 and the law never imposes upon a defendant  
20 in a criminal case the burden or duty of  
21 calling any witness or producing any  
22 evidence.

23 Now, if you should find beyond a  
24 reasonable doubt from the evidence in the  
25 case that the accused, Mr. Gordon, did

1 willfully commit robbery of the savings  
2 and loan association, as charged, then  
3 you must proceed to determine whether the  
4 evidence in the case establishes that the  
5 accused, in committing robbery of a  
6 savings and loan association, assaulted  
7 or put in jeopardy the life of Eileen  
8 Batt, as charged in the indictment. You  
9 will notice particularly that it is Eileen  
10 Batt with whom we are concerned, we are  
11 not concerned with Frances Bialck.

12 Any willful attempt or threat to  
13 inflict injury on the person of another,  
14 when coupled with an apparent present  
15 ability to do so, or any intentional dis-  
16 play of force, such as would give the  
17 victim reason to fear or expect immediate  
18 bodily harm, constitutes an assault. An  
19 assault may be committed without actually  
20 touching or striking or doing the bodily  
21 harm to the person of another. So a  
22 person who has the apparent present ability  
23 to inflict bodily harm or injury upon  
24 another person, and willfully attempts or  
25 even threatens to inflict such bodily harm,



as by intentional flourishing or pointing a pistol or gun at another person, may be found to have assaulted such person.

A dangerous weapon or device includes anything capable of being readily operated, manipulated, wielded or otherwise used by one or more persons to inflict severe bodily harm or injury upon another person. So an operable firearm, such as a pistol, revolver or other gun, capable of firing a bullet or other ammunition may be found to be a dangerous weapon or device.

To put in jeopardy the life of a person by the use of a dangerous weapon or device means then to expose such person to the risk of death or to the fear of death by the use of such dangerous weapon or device.

The test of whether a victim's life has been placed in danger is an objective one, not whether the employee was put in fear, but whether her life was put in danger by the use of a dangerous weapon. In this connection you may consider testimony indicating that a gun was

1 displayed during the robbery, and although  
2 there is no direct, that is, eyewitness  
3 evidence that the gun was loaded, evidence  
4 that a robber displayed a gun to back up  
5 his demands may indicate that he wants  
6 the victim to believe that it is operable  
7 and loaded. You may infer that the gun  
8 was operable and loaded from that evidence,  
9 under rules which I will mention later in  
10 my instructions concerning direct and  
11 circumstantial evidence.

12 There is evidence that Government's  
13 Exhibit 7, the gun, which was seized in  
14 defendant's room in Dallas, was loaded at  
15 that time and that it was operable late  
16 in January of 1976. You must decide  
17 whether Government's Exhibit 7 was the  
18 gun Eileen Batt and Frances Bialek saw in  
19 defendant's hand at the bank on October 3,  
20 1975, and whether its condition of oper-  
21 ability was the same on January 26, 1976  
22 as it was on October 3, 1975.

23 There are certain rules of law, some  
24 of which I have already mentioned, which  
25 are common to all criminal cases, and which



1 you must apply in reviewing the evidence  
2 which is before you. A basic rule in  
3 all criminal cases is that a defendant,  
4 and that includes this defendant, Herbert  
5 Davis Gordon, is presumed to be innocent.  
6 He is presumed to be innocent at the time  
7 the indictment was laid or returned, at  
8 the time this trial started, and during  
9 all of the evidence and up to this point,  
10 and through this point, and will be  
11 considered so until, when and if you may  
12 return a verdict of guilty. Through all  
13 of that time he is presumed to be innocent.

14 Now, the burden of proof that a  
15 person is guilty beyond a reasonable doubt  
16 rests with the Government at all times,  
17 it never shifts to the defendant. In  
18 order to sustain the Government's burden,  
19 it must present proof which is sufficiently  
20 strong to convince each juror of defendant's  
21 guilt beyond a reasonable doubt. The  
22 requirement that the prosecution prove  
23 a defendant's guilt beyond a reasonable  
24 doubt extends to every essential element  
25 of a crime or crimes charged against this

1 defendant, as I have outlined to you.  
2 If you are satisfied from a review of all  
3 of the evidence in the case that the  
4 evidence as to a particular count  
5 establishes guilt beyond a reasonable  
6 doubt, you may convict the defendant on  
7 that count. On the other hand, if you  
8 have a reasonable doubt at any point with  
9 respect to a particular count under  
10 consideration, you must acquit the  
11 defendant on that count. You will, of  
12 course, separately weigh and determine  
13 the evidence as to each of the three  
14 counts in the indictment. You will  
15 determine the guilt or innocence of the  
16 defendant as to each count of the indict-  
17 ment separately.

18 Now, a reasonable doubt is a fair  
19 doubt, based upon reason and common sense,  
20 and arising from the state of the evidence.  
21 Of course, it is rarely possible to prove  
22 anything to an absolute certainty. Proof  
23 beyond a reasonable doubt therefore is  
24 established if the evidence is such as  
25 you would be willing to rely and act upon



1 in the most important of your own affairs.  
2 A defendant, however, is not to be  
3 convicted on mere suspicion or conjecture  
4 or mere accusation. A reasonable doubt  
5 may arise not only from the evidence  
6 produced, but also from a lack of evidence.  
7 Since the burden is upon the Government,  
8 that is, the prosecutor, to prove the  
9 accused guilty beyond a reasonable doubt  
10 of every essential element of the crime  
11 charged, a defendant has the right to  
12 rely upon the failure of the prosecution  
13 to establish such proof. A defendant may  
14 also rely upon evidence brought out on  
15 cross examination of witnesses who have  
16 been produced by the prosecution. The law  
17 does not impose upon the defendant the  
18 duty of producing any evidence. Remember,  
19 however, that a reasonable doubt is such  
20 doubt as is based upon reason and as  
21 appeals to your power of logic. It is a  
22 doubt arising out of something tangible  
23 in the evidence in the case or something  
24 lacking in the case. It is to be distin-  
25 guished from a doubt which may be based

1 upon some emotion, such as upon a whim  
2 or upon fancy. If you feel uncertain and  
3 not fully convinced that the defendant is  
4 guilty of the crimes charged, and you  
5 believe you are acting in a reasonable  
6 manner, and you believe a reasonable man  
7 or woman in any matter of like importance  
8 would hesitate to convict because of such  
9 a doubt as you have, that is a reasonable  
10 doubt, to the benefit of which the  
11 defendant is entitled. If you have such  
12 a doubt, you must acquit. As I have  
13 stated before, a reasonable doubt in your  
14 mind as to any essential element of the  
15 crime entitles the defendant to acquittal  
16 of that crime and that count involved.

17 However, the rule that the Government  
18 must prove every essential element of a  
19 crime beyond a reasonable doubt does not  
20 mean that you must believe the testimony  
21 of every Government witness as being true  
22 beyond a reasonable doubt or that every  
23 piece of evidence they have offered is  
24 true beyond a reasonable doubt. It means  
25 only that the credible evidence, as weighed



1 and found by you, under my instructions  
2 and as viewed as a whole, must establish  
3 every essential element of the crime and  
4 the defendant's guilt beyond a reasonable  
5 doubt.

6 Now, as the sole judges of the facts,  
7 you must determine which of the witnesses  
8 you believe, what portion of their testi-  
9 mony you accept, and what weight you  
10 attach to it. At times during the trial  
11 I sustained objections to questions which  
12 were asked without permitting the witness  
13 to answer or where an answer had been  
14 made I may have instructed that you  
15 disregard it, that it be stricken from  
16 the record. You may not draw any infer-  
17 ence from an unanswered question. What  
18 the lawyers have said is not evidence,  
19 so what is in their question is not  
20 evidence, nor may you consider testimony  
21 which has been stricken in reaching your  
22 decision. The law requires that your  
23 decision be made solely upon the competent  
24 evidence before you, what you heard from  
25 the witnesses on the witness stand, and

1 what is embodied in those pieces of  
2 evidence which I have admitted into  
3 evidence and which you will have for your  
4 consideration. Any item that I have  
5 excluded is not legally admissible and  
6 is not to be considered by you.

7 A defendant in an American court,  
8 such as Herbert Davis Gordon is a  
9 defendant in this case in this court, is  
10 under no obligation to give any evidence  
11 whatsoever. I mentioned that he need not  
12 produce any evidence. He need not himself  
13 give any evidence. You should not draw  
14 any inference from the failure of the  
15 defendant in this case to take the stand  
16 and testify about the case. A defendant  
17 has the right to go to you, the jury, on  
18 the contention that the evidence of the  
19 prosecution is insufficient to warrant  
20 his conviction under the rules of law  
21 which I have been outlining to you.

22 There is evidence in the case that  
23 the defendant has made outside the  
24 courtroom certain statements. Evidence  
25 relating to any statement or act claimed



1 to have been made or done by a defendant  
2 outside of court, and after a crime has  
3 allegedly been committed, should always  
4 be considered with caution and weighed  
5 with great care, and all such evidence  
6 in the case must convince the jury beyond  
7 a reasonable doubt that the statement or  
8 act was knowingly made or done. In  
9 determining whether any statement or act  
10 claimed to have been made by a defendant  
11 outside of court, and after the crime has  
12 allegedly been committed, was knowingly  
13 made or done, you should consider the  
14 age and the sex and the training, the  
15 education, occupation and physical and  
16 mental condition of the defendant, as you  
17 know it, and his treatment while in  
18 custody or under interrogation as that  
19 might have been brought to your attention,  
20 and also all other circumstances in  
21 evidence surrounding the making of a  
22 statement or the act or the admission,  
23 including whether before the statement  
24 or act was made or done the defendant  
25 knew or had been told and understood that

1 he was not obligated or required to make  
2 or do the statement or act claimed to  
3 have been made or done by him, that any  
4 statement or act which he might make or  
5 do could be used against him in court,  
6 that he was entitled to the assistance of  
7 counsel before making any statement,  
8 either oral or in writing, or before  
9 doing any act or omitting to do any act,  
10 and that if he was without money or means  
11 to retain counsel of his own choice, an  
12 attorney would be appointed to advise him  
13 and represent him free of cost and  
14 obligation. A statement or act is know-  
15 ingly made or done if it is done volun-  
16 tarily and intentionally, and not because  
17 of mistake or accident or other innocent  
18 reason. If the evidence in the case does  
19 not convince you beyond a reasonable  
20 doubt that a statement was made voluntarily  
21 and intentionally, you should disregard  
22 it entirely. On the other hand, if the  
23 evidence in the case shows beyond a  
24 reasonable doubt that the statement was  
25 in fact voluntarily and intentionally



1 made by the defendant, you may consider  
2 it as evidence in the case against the  
3 defendant.

4 Now, you, the jury, also are the  
5 sole judge of the weight that you are  
6 going to assign to the testimony of  
7 different witnesses. Some of the evidence  
8 in the case may be more believable to you  
9 than other evidence. The matter of the  
10 credibility of the witnesses you have  
11 heard is one of the questions of fact  
12 which you must take into consideration  
13 in arriving at your verdict, and you are  
14 entitled to and should utilize in this  
15 connection your observation of the witnesses  
16 as they appeared before you on the stand,  
17 and your own experience in your respective  
18 lives, in deciding whether someone is  
19 stating the truth. You may find that one  
20 or more witnesses was a better observer,  
21 had a more accurate memory or was other-  
22 wise more reliable than other witnesses.  
23 You may take into consideration in  
24 evaluating the testimony the demeanor of  
25 the witness on the stand, and the interest

1 or lack of interest which he or she has  
2 in the outcome of the litigation. If you  
3 find that a witness knowingly testified  
4 falsely concerning any material matter,  
5 you have a right to discount his or her  
6 entire testimony, or you may choose from  
7 that testimony that which you believe to  
8 be true and reject that which you believe  
9 not to be true. A witness knowingly  
10 testifies falsely if he or she thus  
11 testifies intentionally and not merely  
12 because of mistake or other innocent  
13 reason.

14 There are two types of evidence from  
15 which you may properly find a defendant  
16 guilty of the offense or offenses charged  
17 in this case. The proof can consist of  
18 the testimony of those who witnessed the  
19 defendant's conduct and who have testified  
20 to that conduct in the course of the trial.  
21 This is oftentimes called direct evidence  
22 or eyewitness evidence. Although the  
23 Government may not be able to produce  
24 eyewitnesses to the conduct on which guilt  
25 depends, this does not mean that it cannot



1 produce proof sufficient to support a  
2 verdict. You are permitted to draw from  
3 one fact the existence of another, if  
4 reason and experience support the infer-  
5 ence, that is to say, you may draw from  
6 facts, which you find to have been proven,  
7 such reasonable inferences as seem  
8 justified by reason and logic in the  
9 light of your own experience in life.  
10 Basically, an inference is nothing more  
11 than a deduction or conclusion which  
12 reason and common sense lead you to draw  
13 from facts which have been proven. As I  
14 have stated before, any inference which  
15 is drawn from the evidence must reasonably  
16 flow from the evidence, and must be based  
17 upon facts established in the evidence.  
18 Since a permissible inference in law must  
19 flow naturally and logically from and  
20 be based upon facts established by the  
21 evidence, it follows you may not base  
22 further inferences merely on inferences  
23 already drawn. You cannot base an infer-  
24 ence upon an inference. If in the course  
25 of your consideration of all of the

1 evidence as to defendant you find that  
2 certain evidence admits equally of two  
3 inferences, one supporting innocence and  
4 the other supporting guilt, you must  
5 accept the inference supporting innocence  
6 and reject the inference supporting guilt.

7 In weighing the evidence which has  
8 been adduced you can consider the circum-  
9 stance, if you find it has been established  
10 beyond a reasonable doubt, that the  
11 defendant had the exclusive possession of  
12 property, which was specified in any  
13 count of the indictment, recently after  
14 that property was stolen in the robbery  
15 which is alleged in the indictment. You  
16 are not required to draw any conclusion  
17 from that circumstance, but you are  
18 permitted to infer from the defendant's  
19 unexplained or unsatisfactorily explained  
20 possession of recent stolen property that  
21 the defendant is guilty of the offense  
22 if, in your judgment, such an inference  
23 is warranted by the evidence as a whole.  
24 The defendant's possession of the recently  
25 stolen property does not shift the burden



1 of proof. The burden is always upon the  
2 Government to prove beyond a reasonable  
3 doubt every essential element of an  
4 offense before the defendant may be found  
5 guilty of that offense. Before you may  
6 draw any inference from the defendant's  
7 unexplained or unsatisfactorily explained  
8 possession of property stolen in the  
9 robbery charged in any count of the  
10 indictment, you must first find that the  
11 Government has proved beyond a reasonable  
12 doubt every essential element of that  
13 offense, and as to those elements I have  
14 already instructed you. If you should  
15 find the Government has proved beyond a  
16 reasonable doubt every essential element  
17 of that offense, the defendant's unexplained  
18 possession of the recently stolen property  
19 is a circumstance upon which you may find  
20 by the process of inference that the  
21 defendant was the person who stole it.  
22 In short, if the Government has proved  
23 beyond a reasonable doubt every essential  
24 element of the offense of robbery charged  
25 in this case, then, but only then the

1 defendant's unexplained possession of  
2 property stolen in that robbery permits  
3 you to infer that the defendant was the  
4 robber.

5 The word "recently" as used in these  
6 instructions is a relative term and has  
7 no fixed meaning. Whether property may  
8 be considered as recently stolen depends  
9 upon all the facts and circumstances  
10 shown by the evidence. The longer the  
11 period of time since the theft of the  
12 property, the more doubtful becomes the  
13 inference which may reasonably be drawn  
14 from its unexplained possession.

15 In considering whether the defendant's  
16 possession of the recently stolen property  
17 has been satisfactorily explained, you  
18 must bear in mind that the defendant is  
19 not required to take the witness stand  
20 himself or to furnish an explanation.  
21 His possession may be satisfactorily  
22 explained by other circumstances shown  
23 in the evidence independently of any  
24 testimony by the defendant himself, and  
25 even though the defendant's possession



1 of the recently stolen property is  
2 unexplained, you cannot draw the inference  
3 under consideration if, on the evidence  
4 as a whole, you have a reasonable doubt  
5 as to his guilt.

6 It is exclusively within your  
7 province to determine, (a), whether the  
8 property specified in any count of the  
9 indictment was stolen in the robbery  
10 alleged and, if so, (b), while recently  
11 stolen it was in the exclusive possession  
12 of the defendant and, if so, (c), whether  
13 the possession of the property has been  
14 satisfactorily explained and, (d),  
15 whether the evidence as a whole warrants  
16 any inference therefrom.

17 If you should find the Government  
18 has proved beyond a reasonable doubt  
19 every essential element of the offense of  
20 robbery charged in any count of the indictment,  
21 and that property was stolen, as  
22 alleged, and that while recently stolen  
23 it was in the exclusive possession of the  
24 defendant, you may draw, but you are not  
25 required to draw, from these circumstances

1 the inference that the defendant is  
2 guilty of the offense of robbery charged  
3 in that count of the indictment, unless  
4 his possession of the property is  
5 satisfactorily explained by other circum-  
6 stances shown by the evidence or unless  
7 on the evidence as a whole you have a  
8 reasonable doubt as to his guilt.

9 If you should find that the Govern-  
10 ment has failed to prove beyond a reason-  
11 able doubt every essential element of  
12 the offense of robbery charged in that  
13 count of the indictment, or if you should  
14 find that the Government has failed to  
15 prove beyond a reasonable doubt that  
16 property specified in that count of the  
17 indictment was in the exclusive possession  
18 of the defendant while recently stolen,  
19 or if the defendant's possession of the  
20 stolen property is satisfactorily explained  
21 by other circumstances shown by the  
22 evidence, or if on the evidence as a whole  
23 you have a reasonable doubt as to the  
24 defendant's guilt, then in any one or more  
25 of these events, you must find the



1 defendant not guilty of the offense of  
2 robbery charged in such count of the  
3 indictment.

4 Identification of this defendant as  
5 the person who stood at Eileen Batt's  
6 teller's cage on the morning of October  
7 3, 1975 is, of course, one of the key  
8 elements of the Government's burden of  
9 proof in this case. In considering  
10 identification testimony, you are to  
11 keep in mind that such testimony should  
12 be considered with great caution. No  
13 class of testimony is more uncertain and  
14 less to be relied upon than that as to  
15 identity. Identification testimony is  
16 an expression of belief or impression by  
17 the witness. Its value depends on the  
18 opportunity the witness had to observe  
19 the offender at the time of the offense  
20 and to make a reliable identification  
21 later. In appraising the identification  
22 testimony of a witness, you should  
23 consider the following: First, are you  
24 convinced that the witness had the  
25 capacity and an adequate opportunity to

1 observe the offender. whether the witness  
2 had an adequate opportunity to observe  
3 the offender at the time of the offense  
4 will be affected by such matters as how  
5 long or short a time was available, how  
6 far or close the witness was, how good  
7 were lighting conditions, whether the  
8 witness had had occasion to see or know  
9 the person in the past. Secondly, you  
10 must consider the credibility of each  
11 identification witness in the same way as  
12 any other witness. Consider whether he  
13 or she is truthful. Consider whether he  
14 or she had the capacity and opportunity  
15 to make a reliable observation on the  
16 matter covered in his or her testimony.  
17 I again emphasize that the burden of  
18 proof on the prosecutor extends to every  
19 element of the crime charged, and this  
20 specifically includes the burden of proving  
21 beyond a reasonable doubt the identity of  
22 the defendant as the perpetrator of the  
23 crime with which he stands charged. If,  
24 after examining the testimony, you have  
25 a reasonable doubt as to the accuracy of



1 the identification, you must find the  
2 defendant not guilty.

3 Proof of a chain of circumstances  
4 pointing to the commission of an offense  
5 by an accused is termed circumstantial  
6 evidence, and you may, of course, consider  
7 and find that both types of evidence,  
8 direct and circumstantial, bear upon the  
9 question of the innocence or the guilt  
10 of the defendant. As a general rule, the  
11 law makes no distinction between direct  
12 and circumstantial evidence, but simply  
13 requires that before convicting  
14 defendant you, the jury, be satisfied of  
15 his guilt beyond a reasonable doubt.

16 Now, I stress again that you are to  
17 find the facts. Examples or factual  
18 indications that I have given do not  
19 indicate any opinion on my part as to how  
20 you should find on any issue of fact or  
21 whether you should find this defendant  
22 guilty or whether you should acquit him.  
23 These matters are totally for your  
24 decision, and I have no part in making  
25 that decision, other than giving you the

1 instructions on the law which I have  
2 done.

3 Your verdict as to the guilt or  
4 innocence of the defendant on each of  
5 these three counts must be reached  
6 unanimously, with all twelve jurors  
7 agreeing on the particular result. I  
8 will send a copy of the indictment to  
9 the jury room with you for your reference,  
10 and this has been marked Court Exhibit A.  
11 You should bear in mind that the  
12 indictment is not in evidence, and it is  
13 not itself evidence, it is merely the  
14 device as used in our courts whereby a  
15 defendant is advised of the charges which  
16 have been placed against him, and you  
17 should not consider it as proving or tend-  
18 ing to prove anything whatsoever.

19 Now, you may also find a defendant  
20 here guilty of an offense, which is  
21 necessarily included in the crime charged,  
22 if it is consistent with the facts given  
23 in the evidence and in the law given in  
24 my instructions. This has particular  
25 reference to the crime which is charged



1 in count two of the indictment, namely,  
2 the violation of Section 2113(b), Title  
3 18, and in the elements there you will  
4 remember that, as I read them to you,  
5 what must be proved is that the amount  
6 taken exceeded \$100. Now, the offense,  
7 larceny, under that section necessarily  
8 includes the lesser offense involving  
9 the same acts, with the same intent, but  
10 involving money of a value not exceeding  
11 \$100. Thus, with respect to that count  
12 of the indictment, you have to find  
13 separately whether the amount of money  
14 involved is over \$100, and if it is not,  
15 of course, there would be no violation  
16 of that section.

17 When you go into the jury room you  
18 will pick one of your number to act as  
19 your spokesman or the person who will  
20 speak for you when you come back into  
21 court and, if for any reason you have to  
22 get in touch with me, or if you have any  
23 question, you only do that by writing out  
24 a note and giving it to the deputy marshal  
25 who will be down there outside of your

1 deliberation room. You should not  
2 question the deputy marshal or anyone  
3 about what your duties are. If you have  
4 a question, write it out, give it to the  
5 deputy marshal, the deputy marshal will  
6 bring it to me, and I will give it prompt  
7 attention.

8 Now, your verdict, as I said, must  
9 be by unanimous vote, and when you have  
10 reached a verdict, either of acquittal  
11 or of guilt on each of the three counts,  
12 you will advise me by a note when you have,  
13 and then I will bring you back into the  
14 courtroom. You will receive in the jury  
15 room all of the exhibits which are in  
16 evidence.

17 In connection with the offense of  
18 stealing less than \$100, as I mentioned  
19 in connection with count two, he, the  
20 defendant, of course, is charged with  
21 the violation of Section 2113(b) with  
22 having taken more than \$100, but it is a  
23 further offense, although a lesser offense,  
24 of that same section to take money not  
25 exceeding \$100 or something of value not



1 exceeding \$100. So you can, if the  
2 evidence supports such a determination  
3 and verdict, you can find Mr. Gordon  
4 guilty of having violated Section 2113(b)  
5 and therefore guilty under count two of  
6 the indictment of taking less than \$100  
7 but, of course, if you do, your report  
8 to me in open court would be to that  
9 express effect.

10 Now, in the oath that each of you  
11 took at the time you were sworn in as  
12 members of the jury, you swore that you  
13 would well and truly try this issue which  
14 is joined between the Government and  
15 Mr. Gordon, and a true verdict give  
16 according to the evidence, so help you  
17 God. I suggest to you that if you follow  
18 that oath and try the issues without  
19 combining your thinking with any emotion,  
20 you will arrive at a true and just verdict.  
21 It must be clear to you that once you get  
22 into an emotional state and you let bias,  
23 sympathy or prejudice interfere with  
24 your thinking, you will not arrive at a  
25 true and just verdict. As you deliberate,

1 ladies and gentlemen, please be careful  
2 to listen to the opinions of your fellow  
3 jurors, and ask for an opportunity to  
4 express your own view. No one juror  
5 holds center stage in the jury room, and  
6 no one juror controls or monopolizes the  
7 deliberation. After listening to your  
8 fellow jurors and if after stating your  
9 view you become convinced that your view  
10 is wrong, do not hesitate because of  
11 stubbornness or pride of opinion to  
12 change your view. On the other hand, do  
13 not surrender your honest convictions  
14 merely because you are outnumbered. Your  
15 verdict must be unanimous, it must  
16 represent the absolute conviction of  
17 each one of you.

18 Gentlemen, is there any exception  
19 or further requests or anything you want  
20 heard in the absence of the jury?

21 MR. WILLIAMS:

I have both categories, your Honor.

22 THE COURT:

23 All right. I will ask you to step  
24 down to the end of the hall again, if you  
25 will.



1 (Thereupon the jury exited the  
2 courtroom at 12:00 noon.)

3  
4 THE COURT:

All right.

5 MR. WILLIAMS:

6 Your Honor, I have an exception,  
7 at least insofar as it goes, relating to  
8 the Court's instructions to the jury with  
9 respect to the gun, Government's Exhibit  
10 7, namely, the Court told the jury that  
11 it must decide whether or not this was  
12 the weapon used and whether or not it was  
13 capable of being fired. I have no  
14 objection as far it goes, except that it  
15 is certainly possible that the jury could  
16 find that that may not have been the  
17 weapon used, but certainly, considering  
18 the testimony and looking at the surveil-  
19 lance photographs, that some weapon was  
20 used. What I am concerned with is if  
21 there is no addition to that charge, they  
22 are going to be convinced that if they  
23 find that is not the gun, that they  
24 could not possibly convict him on count  
25 one or three. That is combined, sort of  
an exception and a request. The other

1 two categories, your Honor, the other  
2 two are really in the same category.  
3 It relates to the Court's charge on  
4 possession of recently stolen property,  
5 and it relates to the Court's charge on  
6 eyewitness identification. In both  
7 instances the Court concluded its charge  
8 by saying, in the first instance, if the  
9 jury has any question as to whether or  
10 not the recently stolen property was  
11 taken from the bank, it must acquit.  
12 Certainly there is plenty of other  
13 evidence in the case, including eyewitness  
14 identification, that the defendant is the  
15 man who robbed the bank. Likewise, with  
16 respect to the eyewitness identification,  
17 the Court has said if the jury does not  
18 believe the eyewitnesses that this is the  
19 man that robbed the bank, then likewise  
20 it must acquit. Again, certainly there is  
21 other evidence, in addition to eyewitness  
22 evidence, wherein the jury could reasonably  
23 find that the defendant is guilty beyond  
24 a reasonable doubt, namely, the surveillance  
25 photographs and, secondly, the items that



were recovered in his room, two bills that are bait money, two bills that were bait money that were recovered from the clerk at the Y, the bag that was recovered, the demand note that was recovered, the gun that was recovered, all of which were identified. I think the Court's charge in these three respects gives the jury the idea that unless they make that specific finding they are to acquit the defendant.

THE COURT:

All right. Mr. Rinaldo?

MR. RINALDO:

Well, the only request I would have of the Court would be that I would ask you to re-emphasize the fact that they must deliberate and reach a verdict on each individual count. I am not sure if in the course of your charge they did not get the impression that they might take an overall approach to it. I would ask the Court to make that a little more specific.

THE COURT:

All right. I believe as to the recent stolen property that the charge is all right, Mr. Williams, because the

1 emphasis there was on the evidence as a  
2 whole. Now, it needs a little sharpening.  
3 All right, bring them back in.  
4

5 (Thereupon the jury returned to the  
6 courtroom at 12:05 p.m.)  
7

8 THE COURT:

9 Counsel have asked that I clarify  
10 or re-emphasize certain aspects of the  
11 charge. Firstly, although I think I have  
12 sufficiently stated it to you, and I  
13 think you should understand this from  
14 what I have said, there are three counts  
15 of the indictment, and each one charges  
16 a separate crime. Each one is under a  
17 different section of the Statute, as I  
18 have enumerated, and each of those crimes  
19 carries with it different essential  
20 elements, as I have outlined. You must  
21 consider each count and crime separately.  
22 Now, as I say, I think you have already  
23 gotten that idea that I want to emphasize  
24 that to you. I talked of the gun and  
25 its operability, and the chore that you  
would have in determining whether



1 Government's Exhibit 7, which was the  
2 gun taken from the room in Dallas, was  
3 the same gun as Miss Batt and Miss  
4 Bialek testified in the bank. You can,  
5 of course, while still not being satis-  
6 fied or determining that that Government  
7 Exhibit 7 is not that same gun, still  
8 be satisfied that a different gun was  
9 employed by Mr. Gordon, if you find that  
10 it was he, at the bank on October 3rd  
11 and, of course, if you do find that there  
12 was a different gun there, you still can  
13 proceed to a conviction if you are  
14 satisfied that all the other elements in  
15 the crimes have been proved beyond a  
16 reasonable doubt.

17 Further, I talked of identification  
18 testimony, and I had reference particularly  
19 to the identification testimony as it was  
20 given by Eileen Batt and Frances Bialek  
21 from the stand, who testified of seeing  
22 this person in front of the teller's cage  
23 and made an identification of the defendant  
24 in court. It was with reference to that  
25 that I was speaking, but I think I concluded

1 by saying if you had some reasonable  
2 doubt about that identification that you  
3 should proceed from that point to acquittal.  
4 There is in the case other evidence from  
5 which you might determine, regardless of  
6 how you viewed the identification testi-  
7 mony, that Mr. Gordon was the robber.  
8 In making these comments I have no  
9 inference of how you should find, but  
10 there are two or more -- well, two or  
11 three possible ways of your determining  
12 whether or not Mr. Gordon was the man  
13 that was in the bank. I did not mean that  
14 the eyewitness identification testimony  
15 should be the exclusive means of doing  
16 that. You must, however, still pay close  
17 attention to the identification testimony  
18 and the character of that and, of course,  
19 when you leave that area of testimony  
20 and go into some other aspect or means  
21 of identification, you should be even  
22 more cautious and more careful. The two  
23 means do exist. You still must be  
24 satisfied as to every element beyond a  
25 reasonable doubt or you must acquit.



1 All right, is that satisfactory, gentle-  
2 men?

3 MR. WILLIAMS: Yes, thank you.

4 MR. RINALDO: Yes, your Honor.

5 COURT: All right, swear the marshals.

6  
7 (Thereupon two deputy marshals were  
8 duly sworn.)  
9

10 THE COURT: As I have indicated to you, your  
11 first item of business will be to select  
12 one of your number to be the person who  
13 will speak for you. Secondly, you may  
14 want to do some preliminary deliberating.  
15 Thirdly, you will want to have some lunch,  
16 what time, Mr. Walsh?

17 CLERK: They should make arrangements very  
18 shortly.

19 THE COURT: Probably within the half hour we will  
20 make arrangements for your lunch, and  
21 you will go out and have lunch and come  
22 back and resume your deliberations. So  
23 now at this time the twelve originally  
24 selected will go with the two deputy  
25 marshals to the deliberation room, and

1 the two alternates -- do you have clothing  
2 there?

3 ALTERNATE JUROR NO. 1: Yes.

4 THE COURT: You can go down there with them and  
5 the deputies will see, of course, that  
6 they immediately get their clothing out  
7 and retire from the room. You, as the  
8 alternates, of course, unfortunately  
9 have served your purpose at this point,  
10 you have insured that the jury can be  
11 intact and the trial go forward if any-  
12 thing would have happened to any of the  
13 other jurors. nothing has happened, and  
14 we have the twelve original jurors who  
15 will be deliberating, and all we can do  
16 is to thank you for your close attention  
17 and time.

18  
19 (Thereupon the jury exited the  
20 courtroom at 12:12 p.m.)

21  
22 (Thereupon the court was in recess  
23 at 12:15 p.m., awaiting the return of  
24 the jury.)  
25



1 PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 2:35 P.M.

2

3

(Defendant present, counsel present,  
4 jury absent.)

5

6

THE COURT:

7

8

Let the record reflect that this is  
United States vs. Herbert Davis Gordon,  
Criminal 75-234. I have had note from  
9 the jury, received by me at 2:03 which  
10 says in its entirety, and it is not  
11 signed, it says, "Define Section 2113(d)."  
12 So I would propose to read to the jury  
13 that part which does interpret that  
14 section.

15

16

17

18

19

20

21

22

MR. WILLIAMS:

I would agree.

23

24

MR. RINALDO:

I am in agreement, your Honor.

25

26

27

28

29

30

31

32

33

THE COURT:

Who is the foreperson?

JUROR NO. 5:

I am, your Honor.

THE COURT:

I have a note which I received at  
2:03 p.m., which says, "Define Section  
2113(d)." I would propose to read to

1 you that portion of my charge that dealt  
2 with that section, which is the section  
3 that relates to count three of the  
4 indictment. I won't read that count.  
5 The pertinent part of the section is as  
6 follows:

7 "Whoever in committing or attempting  
8 to commit any offense defined in Subsec-  
9 tion (a) -- you will recognize Subsection  
10 (a) as being the subsection that is  
11 involved in count one of the indictment --  
12 assaults any person -- one facet of it --  
13 or puts in jeopardy the life of any  
14 person by the use of a dangerous weapon  
15 or device -- that is the other facet --  
16 shall be guilty of an offense under the  
17 laws of the United States."

18 I told you that the Government must  
19 prove four essential elements in order  
20 for you to convict for that offense under  
21 that section. The first was the act or  
22 acts of taking from the person or presence  
23 of another money belonging to or in the  
24 care, custody, control, management and  
25 possession of a savings and loan association



1 whose deposits are insured by the Federal  
2 Savings & Loan Insurance Corporation.  
3 Second, the act or acts of taking such  
4 money by force or violence or by means of  
5 intimidation. That is the reference  
6 back to the manner of taking in Subsec-  
7 tion (a), which is what you have been  
8 dealing with in count one. Third, the  
9 act or acts of assaulting or of putting  
10 in jeopardy the life of any person by the  
11 use of a dangerous weapon or device while  
12 engaged in stealing such money from the  
13 savings & loan association and, fourth,  
14 doing such act or acts willfully.

15 Now, beyond that, I had gone into  
16 the definitions of assault, I had gone  
17 into the aspect of putting in jeopardy  
18 the life of a person, and I wonder, Mr.  
19 Jones, whether it is any of that that the  
20 jury would like to hear?

21 JUROR NO. 5:

The second part, your Honor.

22 THE COURT:

23 You want to hear the part that deals  
24 with putting in jeopardy the life of a  
person?

25 JUROR NO. 5:

Yes, sir.

1 THE COURT:

2 All right. I think just for complete-  
3 ness, because the first part of it is  
4 very brief, and there are two facets or  
5 alternate facets, I will read first the  
6 assault aspect, which is a short provision,  
7 then the putting in jeopardy, which is a  
8 longer provision.

9 If you should find beyond a reason-  
10 able doubt from the evidence in the case  
11 that the accused did willfully commit  
12 robbery of the savings and loan associa-  
13 tion, as charged, then you must proceed  
14 to determine whether the evidence in the  
15 case establishes that the accused in  
16 committing the robbery assaulted or put  
17 in jeopardy the life of Eileen Batt, as  
18 charged in the indictment. Any willful  
19 attempt or threat to inflict injury on  
20 the person of another when coupled with  
21 an apparent present ability to do so or  
22 any intentional display of force, such as  
23 would give the victim reason to fear or  
24 expect immediate bodily harm constitutes  
25 an assault. An assault may be committed  
without actually touching or striking or



1 doing bodily harm to the person of  
2 another. So a person who has the apparent  
3 present ability to inflict bodily harm  
4 or injury upon another person, and will-  
5 fully attempts or even threatens to  
6 inflict such bodily harm, as by inten-  
7 tionally flourishing or pointing a pistol  
8 or gun at another person, may be found  
9 to have assaulted such person. That is  
10 the aspect that deals with assault. The  
11 other facet of 2113(d), the putting in  
12 jeopardy, a dangerous weapon or device  
13 includes anything capable of being readily  
14 operated, manipulated, wielded or other-  
15 wise used by one or more persons to  
16 inflict severe bodily harm or injury upon  
17 another person. So an operable firearm,  
18 such as a pistol, revolver or other gun,  
19 capable of firing a bullet or other  
20 ammunition may be found to be a dangerous  
21 weapon or device.

22 To put in jeopardy the life of a  
23 person by the use of a dangerous weapon  
24 or device means then to expose such person  
25 to a risk of death or to the fear of

1 death by the use of such dangerous  
2 weapon or device. The test of whether  
3 a victim's life has been placed in danger  
4 is an objective one, not whether the  
5 employee was put in fear but whether her  
6 life was put in danger by the use of  
7 a dangerous weapon. In this connection  
8 you may consider testimony indicating  
9 that a gun was displayed during the  
10 robbery of the First Federal Savings &  
11 Loan Association. Although there is no  
12 direct eyewitness testimony that the gun  
13 was loaded, evidence that a robber dis-  
14 played a gun to back up his demands may  
15 indicate that he wants the victim to  
16 believe that it is operable and loaded,  
17 and you may infer that the gun was  
18 operable and loaded from that evidence  
19 under rules which I will mention later in  
20 my instructions to you concerning direct  
21 and circumstantial evidence.

22 I said there is evidence that Govern-  
23 ment's Exhibit 7, which was the gun  
24 seized in the defendant's room in Dallas,  
25 was loaded and that it was operable late



1 in January of 1976. You must decide  
2 whether Government's Exhibit 7 was the  
3 gun Eileen Batt and Frances Bialek saw  
4 in the defendant's hand at the bank on  
5 October 3, 1975, and whether its condition  
6 of operability was the same on January  
7 26, 1976 as it was on October 3, 1975.

8 Then I clarified and expanded on  
9 that by indicating that even though you  
10 might determine -- or might not be able  
11 to determine beyond a reasonable doubt  
12 that the gun that was picked up in the  
13 Dallas YMCA room was the same weapon that  
14 the person in front of Eileen Batt had  
15 in his hand on October 3, 1975, you still,  
16 if you were satisfied that a person did  
17 have a gun in his hand at that time, and  
18 was threatening -- using it in a threaten-  
19 ing way with Eileen Batt, that you could  
20 therefrom infer reliably that that gun  
21 also was operable and loaded.

22 I think that is the totality, Mr.  
23 Jones. Is there anything more?

24 JUROR NO. 5:

25 I think that is sufficient, your  
Honor.

1 Buffalo, N.Y. ELFVIN, J. March 15, 1976  
 2 Cr. 75-234 HERBERT DAVIS GORDON

3  
 4 APPEARANCES: RICHARD J. ARCARA, ESQ.,  
 5 United States Attorney, by  
 6 KENNETH A. COHEN, ESQ.,  
 7 Ass't. United States Attorney,  
 8 Appearing on behalf of the Government.  
 9 THOMAS N. RINALDO, ESQ.,  
 10 Appearing on behalf of the Defendant.

FILED  
 MAR 18 1976  
 O'C.....M.  
 K. ADAMS, Clerk

9 CLERK: Criminal 75-234, United States versus  
 10 Herbert Davis Gordon.

11 THE COURT: Mr. Gordon, you are here with your  
 12 attorney today following a trial before a  
 13 jury and a conviction by that jury of three  
 14 counts of an indictment charging you with  
 15 various aspects of bank robbery, this being  
 16 2113(a), (b) and (d) of Title 21. Now, Mr.  
 17 Rinaldo, have you anything to say on behalf  
 18 of Mr. Gordon at this time?

19 MR. RINALDO: At this time, your Honor, I would like  
 20 to point out to the Court --

21 THE COURT: Incidentally, you have examined and  
 22 read the presentence report?

23 MR. RINALDO: I have, your Honor. I read it this  
 24 morning, and I had occasion to see Mr.  
 25 Gordon prior to coming to court. If your



1 Honor please, at this time I would like to  
2 point out that Mr. Gordon is presently forty-  
3 seven years of age, that for the better part  
4 of his life he spent it incarcerated in  
5 prison. From the period of 1952 to 1973  
6 he spent some nineteen years in jail. I  
7 think the situation with Mr. Gordon's family  
8 background, his environment, his physical  
9 and mental condition, have been factors  
10 which have led to this life of crime. I  
11 think the proper definition of Mr. Gordon  
12 is stated in the probation report, that Mr.  
13 Gordon is in fact mentally confused. He  
14 is obviously obsessed with the fact that the  
15 whole world seems to be against him, including  
16 the system, the court system, myself, you,  
17 the United States Attorney's office, and so  
18 on, and so forth. I think this lack of  
19 stability in Mr. Gordon's life has led to this  
20 period of crime. He has elected, after being  
21 out of jail for some years, to commit a  
22 bank robbery. Although I think incarceration  
23 appears to be imminent in this case, I would  
24 ask the Court to take into consideration Mr.  
25 Gordon's physical and mental condition, to

1 impose a sentence, whatever in the Court's  
2 mind, considering all the facts and circum-  
3 stances of this case, seems fair and just,  
4 taking into consideration Mr. Gordon's  
5 entire background, his history, his ability  
6 to adjust to his environment, his ability to  
7 exist in jail -- it was pointed out that  
8 whenever he has been incarcerated for a long  
9 period of time he wound up a patient in the  
10 state hospital -- I only ask the Court to  
11 consider all this and impose whatever minimum  
12 sentence it can in this particular case.

13 THE COURT: Mr. Gordon, is there anything that you  
14 want to say on your own behalf?

15 DEFENDANT: Yes, I would like to, sir. Number  
16 one, to file a motion in arrest of judgment;  
17 number two, the Court failing to allow me to  
18 testify on my own behalf. Your Honor, I am  
19 now bringing to the Court's attention that  
20 during the course of this trial I was not  
21 informed by court assigned counsel that you,  
22 your Honor, prevented me from taking the stand  
23 and testifying in my own behalf. I have  
24 since learned that violated my right to  
25 testify on my own behalf. I fear, because



1 of this, that I was not given a fair trial,  
2 as provided by your people, the United States  
3 Constitution. I further feel that there  
4 should be a hearing on this matter here and  
5 now. That is all, sir.

6 THE COURT:

7 All right. Now, I think the record  
8 would speak for itself, Mr. Gordon, as far  
9 as your opportunity to have taken the stand  
10 in your own behalf. I am sure your counsel  
11 told you, I know that your counsel mentioned  
12 this in your presence when he talked to  
13 the jury originally, and I know further  
14 that it was part of my charge to the jury  
15 that they were not to at all detriment your  
16 situation because of your not having taken  
17 the stand, that there was no duty on your  
18 part to do it, that the Government had the full  
19 obligation to prove its case against you and,  
20 consequently, I at this time assign no  
21 weight whatsoever to this position you are  
22 taking about being deprived by me or anyone  
23 else of your right to take the stand on your  
24 own behalf. Now, the motion in arrest of  
25 judgment is denied, and if you have nothing  
further to say on your behalf, I am going to

1 impose judgment. The judgment of this  
2 Court on these three convictions is that you  
3 be committed to the custody of the Attorney  
4 General of the United States for a period of  
5 eighteen years.

6 MR. RINALDO: Thank you, your Honor.

7 CLERK: You must notify him of the ten days to  
8 appeal.

9 THE COURT: Mr. Rinaldo, you will see that within  
10 ten days there is a notice of appeal filed?

11 MR. RINALDO: That is correct.

12 \* \* \* \* \*

13  
14 MR. COHEN: Your Honor, with respect to Criminal  
15 75-234, the matter of Gordon, could you clarify  
16 that sentence for our office, please? Was  
17 the eighteen years incarceration imposed  
18 under violation of Section (d) of the bank  
19 robbery --

20 THE COURT: All three. The maximum would be  
21 eighteen years, that is right. Of course,  
22 there is a certain amount of confusion that  
23 arises out of sentencing under 2113(a), (b)  
24 and (d) which I have tried to resolve in  
25 my own mind, and it seems to me that this is



1 the best manner of doing it. You are as  
2 conversant as I with the cases that have  
3 fallen into this area, and they seem to  
4 prohibit me from saying you will have X  
5 years on (a), X years on (b), and X years  
6 on (d), all running concurrent. They seem  
7 not to prohibit handling it this way, and it  
8 seems to me to be the best way to protect  
9 the whole situation. So sentence is on the  
10 three convictions, eighteen years.

11  
12 \* \* \* \* \*

13  
14 I hereby certify that this record is a  
15 true and accurate transcript of the  
16 stenographic notes in this case.

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Official Reporter  
U.S. District Court

## INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place

Dallas, Texas

Date

10/6/75

Time

3:30 PM

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed \_\_\_\_\_

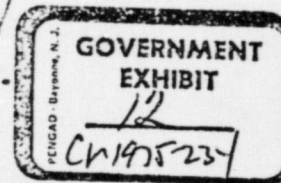
Witness:

N. Lamar Meyer

Witness:

H. David Gordon, FBI Dallas

Time:

3:33 PM

Herbert David Gordon read above, said he understood his rights but refused to sign.

Herbert David Gordon

N. Lamar Meyer

Correct name - H

4:05 PM  
Leftmet



10/6/75

(Date)

Dallas Texas

(Location)

I, Herbert David Gordon, having been

informed of my constitutional right not to have a search made of the  
premises hereinafter mentioned without a search warrant and of my  
right to refuse to consent to such a search, hereby authorize

H. Lamar Meyer, W. Dodson Hanes, and  
\_\_\_\_\_, Special Agents

of the Federal Bureau of Investigation, United States Department of  
Justice, to conduct a complete search of my premises located at

Room 721, Nountown Ymca, 605 N. Erway St, Dallas, Tex.

These agents are authorized by me to take from my premises any  
letters, papers, materials or other property which they may desire.

This written permission is being given by me to the above-  
named Special Agents voluntarily and without threats or promises  
of any kind.

(SIGNED) Herbert Gordon

WITNESSES:

W. Dodson Hanes, FBI - Dallas  
H. Lamar Meyer, FBI, Dallas, Texas.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA, Plaintiff

vs.

HERBERT DAVIS GORDON, Defendant

NOTICE OF MOTION

CR. NO. 1975-234

---

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of THOMAS N. RINALDO, ESQ., duly sworn to on the 8th day of December, 1975, and upon Indictment No. Cr-1975-234, found herein against the defendant, HERBERT DAVIS GORDON, and upon all of the papers and proceedings heretofore had herein in connection with this matter, a Motion will be made at a Term of this Court in the United States Courthouse at Buffalo, New York, on the <sup>15<sup>th</sup></sup> day of December, 1975, at <sup>10:00</sup> ~~2:00~~ in the <sup>after</sup> ~~forenoon~~ of that day, or as soon thereafter as counsel can be heard for an Order pursuant to 18 U.S.C. Section 4244 and pursuant to Rule 12.2 (a) and (b) of the Federal Rules of Criminal Procedure requesting that the Court appoint a qualified psychiatrist to examine the defendant and report to the Court whether or not the said defendant is "presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against

SCINTA, RINALDO  
& SANDLER  
Attorneys at Law  
622 Brisbane Bldg.  
Buffalo, N. Y. 14203

C



him or properly assist in his own defense" and/or whether the defendant did suffer from such mental defect, disease or other condition bearing upon the issue of whether or not he had the mental state required for the commission of the crimes charged in the indictment.

TO: RICHARD J. ARCARA  
U.S. Attorney  
Western District of N.Y.  
502 U.S. Courthouse  
Buffalo, N.Y. 14202

ROGER WILLIAMS, ESQ.  
Assistant U.S. Attorney

Yours, etc.

SCINTA, RINALDO & SANDLER  
Attorneys for Defendant  
622 Brisbane Bldg.  
Buffalo, N.Y. 14203

THOMAS N. RINALDO, of Counsel

SCINTA, RINALDO  
& SANDLER  
Attorneys at Law  
622 Brisbane Bldg.  
Buffalo, N. Y. 14203

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,                      Plaintiff

vs.

AFFIDAVIT

HERBERT DAVIS GORDON,                      Defendant

CR. NO. 1975-234

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STATE OF NEW YORK                      )  
COUNTY OF ERIE                      )    SS.:  
CITY OF BUFFALO                      )

THOMAS N. RINALDO, being duly sworn, deposes and says:

1. That your deponent is an attorney at law duly licensed to practice his profession in all of the Courts of the State of New York, and is a partner in the law firm of SCINTA, RINALDO & SANDLER.

2. That your deponent has been assigned to represent the defendant, HERBERT DAVIS GORDON, in connection with the proceedings against him under Criminal Indictment No. CR. NO.-75-234 wherein the defendant is charged with various violations of the bank robbery statutes.

3. That on November 17, 1975, your deponent did appear at this defendant's arraignment and entered a plea of not guilty on his behalf and requested additional time to file motions on behalf of the defendant herein.

4. Your deponent did file motions and motions were heard and argued on the 2nd day of December, 1975, by the United



States Magistrate for the Western District of New York and at that time your deponent was advised to file additional motions respecting the question of the defendant's insanity or mental incompetency to proceed at trial. Further, at the time of the defendant's arraignment, your deponent was provided with various letters which it is his understanding were written by the defendant while the defendant was in Texas awaiting removal to this jurisdiction for the present proceedings.

5. Your deponent has reviewed the said letters and attached are copies of same hereto for the Court's review and consideration in connection with this instant application.

6. Further, your deponent has been informed that the defendant wrote a letter to Judge Elfvin, Federal Court Judge for the Western District of New York, requesting in the said letter that your deponent be removed as counsel in connection with these proceedings.

7. On December 5, 1975, your deponent did visit the defendant at the Erie County Holding Center and as a result of the conversations with your deponent, further and additionally feels, that it is necessary that this defendant be examined to determine whether or not he understands the charges against him, and whether or not he was at the time of the alleged occurrence or at the present time, insane.

8. Your deponent at this time does not feel he is at

liberty to discuss the details of the conversations had with the defendant at the jail, however, submits to the Court that they are such in nature that they indicate to your deponent a possible insane or incompetent person such as to render these proceedings very prejudicial to him if they were to proceed under his present state of mind.

9. Your deponent, if the Court wishes at the time of the argument of this implication, will request of the defendant in open Court permission to discuss the details of this jail conference, however, absent the expressed permission from his client will be unable to do so, either in this affidavit or at the time of the Court proceedings in connection with this instant application.

10. Further, your deponent submits that he has had conversations with Roger Williams, the U.S. Attorney assigned to prosecute this case and both he and Mr. Williams have agreed that Dr. Michael Lynch, be appointed to examine the defendant herein, and accordingly, your deponent makes that request of the Court.

WHEREFORE, your deponent respectfully requests that the Court order the defendant examined pursuant to 18 U.S.C. Section 4244 and appoint Dr. Michael Lynch to conduct the said examination and report to the Court as soon as possible.

CINTA, RINALDO  
& SANDLER  
Attorneys at Law  
622 Brisbane Bldg.  
Buffalo, N. Y. 14203

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THOMAS N. RINALDO

Sworn to before me this

day of December, 1975.

Notary Public: Erie Co., N.Y. My Comm. expires: 3/30/7



DALLAS, TEXAS

NOV 5 1975

AM  
7:59 AM NOV 12 1975

Handwritten TUESDAY  
11-4-75

PM  
HERBERT D. GORDON  
12-5-10  
DALLAS COUNTY JAIL  
500-COMMERCE STREET,  
DALLAS, TEXAS,  
75202

TO, U.S. ATTORNEY  
MR. FRANK MCCOWAN

DEAR SIR,

I AM WRITING THIS LETTER PERTAINING  
TO A VERY SERIOUS MATTER, WHICH I WOULD  
LIKE VERY MUCH OF THE UNITED STATES  
GOVERNMENT TO DO FOR ME IN MY BEHALF  
I HAVE WRITTEN A LETTER YESTERDAY TO,  
PRESIDENT FORD, ON THIS MATTER, HE  
KNOWS OF ME, HE HAS HELPED ME A FEW  
TIMES TO GET ON MY FEET, HE KNOWS OF ME  
VERY WELL FROM, BUFFALO, NEW YORK, MR.  
MCCOWAN, MY ATTORNEY, MR. WILLIAM F.  
COLLINS, CAME TO VISIT ME LAST FRIDAY,  
AND HE DISCUSSED MY CASE WITH ME, HE  
EXPLAINED TO ME IF I WANTED THIS CASE OF  
MINE DISPOSED OF I WOULD HAVE TO GO BACK  
TO BUFFALO, N.Y. WHICH I DO NOT WANT  
ANY MORE OF NEW YORK STATE REST OF MY  
LIFE OR THEIR JAILS OR PRISONS,

AFTER THE ATTICA ROIT WHERE I WAS  
RELEASE FROM TWO YEARS AGO, MR. MCCOWAN  
I WISH TO HAVE THIS CASE OF MINE DISPOSED  
OF IN ANOTHER MATTER, WHICH WAS MY  
REASONS FOR HOLDING UP THAT BANK  
IN BUFFALO, BUT I HAD NO WAY OF  
KNOWING THERE WOULD ANY MONEY  
WORTH WHILE, MR. MCCOWAN, I HAD  
A DREAM EVERY SINCE MY CHILDHOOD,  
AND EVERY SINCE THE THAT DAY, WHEN  
I ABOUT 3 YRS OLD, I SEEN MY MOTHER  
BRUTALLY THROWN TO THE FLOOR BY  
WHITE MEN, BEATING UP AND RAPED,  
THAT BEEN A NIGHTMARE TO ME VERY  
SINCE MY CHILDHOOD, THATS WHAT STATED  
ME LASING OUT AT YOUR PEOPLE  
SOCIETY AND LAWS, I EXPLAINED THIS  
TO, PRESIDENT FORD, SIR, I WISH TO HAVE  
MY CASE DISPOSED OF IN THIS MATTER



UNDER THESE CONDITIONS, NEVER  
TO SET FOOT IN COUNTRY AGAIN, MR.  
MIRCCOWAN, I WISH TO RESOUNCE  
MY CITIZENSHIP, THERE NOTHING FOR  
ME HERE, BUT HUMAN MISERY,  
I AM A UNDESIRABLE BLACK, WHO  
NEVER COULD BEND TO THE POLICES  
OF YOUR GOVERNMENT, NOT AFTER WHAT  
HAPPEN TO MY MOTHER, THE GOVERNMENT  
COULD PAY MY EXPENSE TO WHERE I  
WISH TO GO, I WISH TO GO TO, SUDAN  
WHERE I WOULD GLADLY BE ACCEPTED, SIR  
IT WOULD BE A LOT CHEAPER LOCKING ME UP  
ON THE TAXPAYER'S MONEY, AND COME OUT  
IN SOCIETY GOING ON WELFARE, ON THE  
TAXPAYER'S MONEY, ITS SIMPLE LOGIC  
SIR IF YOU AND THE COURT AND  
GOVERNMENT AND PRESIDENT FORD, WOULD  
GRANT ME THIS IT WOULD BE BEST ALL CONCERN  
SINCERELY YOURS STELLY BROWN

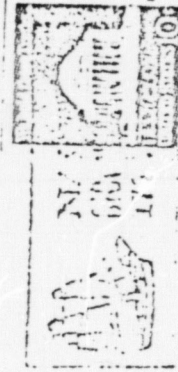
RETURN IN FIVE DAYS TO

HERBERT DAVIS GORDON

12-8-10  
508-COMMERCE STREET  
DALLAS COUNTY JAIL

DALLAS, TEXAS, 75202

ZIP CODE



U.S. ATTORNEY  
MR. FRANK MCCOWAN  
FEDERAL COURT BUILDING  
1100-COMMERCE STREET

DALLAS, TEXAS, 75201



TUESDAY  
11-4-75

HERBERT D. GOODMAN  
12-5-10  
DALLAS COUNTY JAIL  
500-COMMERCE STREET  
DALLAS, TEXAS 75202

TO, HON. JUDGE  
BAILY RANKIN

DEAR SIR, I WRITTEN A LETTER  
YESTERDAY TO, PRESIDENT FORD, WHO  
KNOW OF ME VERY WELL FROM, BUFFALO  
NEW YORK, HE KNOWS OF ME THROUGH  
MY LETTERS I HAVE WRITTEN TO HIM  
ASKING FOR HIS ASSISANT, WHICH HE HAS  
GIVING ME, I WRITTEN TO HIM ON A VERY  
SERIOUS MATTER, WHICH IS THE VERY  
REASON WHY I WRITING YOU THIS LETTER  
SIR, TO ASK OF YOUR COURT AND THIS  
GOVERNMENT, TO GRANT THIS REQUEST  
MY ATTORNEY, MR. WILLIAM E. COLLINS TOLD  
ME HE THINK IT COULDNT BE DONE  
BUT I KNOW OTHERWISE, SIR, I WISH  
TO HAVE THIS CASE DISPOSE OF IN YOUR  
YOUR COURT AND BY THE, UNITED STATES  
GOVERNMENT IN THIS MANNER, SIR

I WISH TO LEAVE THIS COUNTRY FOR  
GOOD, BY RESOUNCING MY CITIZENSHIP  
UNDER THE CONDITIONS TO SET FOOT  
IN IT AGAIN, SIR, THIS HAS BEEN A DREAM  
AND A AMBITION TO ME VERY SINCE  
THAT HORRIBLE DAY WHEN I WAS  
A CHILD, AND SEEN MY MOTHER  
THROWN TO THE FLOOR, AND BEATING UP  
AND RAPED BY WHITE MEN, THIS HAS  
BEEN A LIVING NIGHTMARE TO ME VERY  
SINCE, THIS WHAT STARTED ME LASHING  
OUT AT YOUR PEOPLE SOCIETY AND  
GOVERNMENT AND LIVING A LIFE  
OF CRIME, SIR, THIS IS NO GOOD  
FOR ME, I NEVER COULD ALONG WITH  
YOUR GOVERNMENT POLICES, NOT WHAT  
AFTER HAPPEN TO MY MOTHER WHEN I  
WAS A CHILD, SIR, IT WOULD BE BETTER  
FOR ALL CONCERN, IF THE GOVERNMENT



GOT ME OUT OF THIS COUNTRY AS  
SOON AS IT COULD BE ARRANGE  
THE U.S. GOVERNMENT COULD PAY  
THE EXPENSE TO GET RID OF ME,  
IT WOULD BE A LOT CHEAPER THAN  
PAYING TAXES TO LOOK ME UP THAN  
COME OUT IN YOUR SOCIETY, GETTING  
ON WELFARE ON THE TAXPAYER'S MONEY  
THAN GOING OUT AGAIN AND  
COMMITTED MORE CRIME AGAINST  
YOUR PEOPLE SOCIETY AND LAWS  
JUDGE, IT WOULD BE BEST FOR EVERY  
ONE CONCERN, THERE NOTHING  
HERE FOR ME IN THIS COUNTRY  
BUT HUMAN MISERY, SIR, PLEASE  
FINE AWAY FOR YOUR COURT AND  
U.S. ATTORNEY, AND, PRESIDENT  
FORD AND YOUR GOVERNMENT TO  
ME THIS. SINCERELY YOURS -

THELMA DAWG DAWG

SIR, I HAVE TO USE NEWSPAPER  
EVERY MORNING TO DRY MY  
SELF OFF AFTER I TAKE A SHOWER  
IN THIS JAIL I AM TREATED  
LIKE FILTH, THE GOVERNMENT  
PAY THESE PEOPLE TO SEE THAT I AM  
PROPERLY CARE FOR, ALSO ITS  
NO DEAL ABOUT ME HERE HAVING  
ANY DONE FOR ME AND HAVING TO  
PAY 40 CENT FOR A HAIR CUT  
RAGES

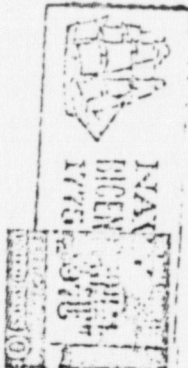


RETURN IN FIVE DAYS TO

HERBERT DAVIS GORDON  
12-5-10  
500-COMMERCE STREET  
DALLAS COUNTY JAIL  
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ZIP CODE



NOV - 5 - 1975



HON. JUDGE BAILEY RANKIN  
FEDERAL COURT BUILDING  
1100 COMMERCE STREET  
DALLAS, TEXAS, 75201

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UNITED STATES OF AMERICA

vs.

HERBERT DAVIS GORDON

AFFIDAVIT OF SERVICE

APPEAL - No. 76-1138

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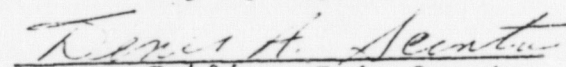
I, THOMAS N. RINALDO, on May 11, 1976 served two copies of the Brief and Appendix on Appeal in this matter personally on ROGER WILLIAMS, ESQ., Assistant District Attorney, for the Western District of New York and he acknowledged receipt of same in my presence.



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Sworn to before me this

11<sup>TH</sup> day of May, 1976



Notary Public : Erie County

My Commission Expires: 3/30/77